Supreme Court, U.S.
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No. 09-722

In The

Supreme Court of the United States

HAROLD GREEN,

Petitioner,

v.

CLEARY WATER, SEWER AND FIRE DISTRICT,

Respondent.

On Petition For Writ Of Certiorari To The Mississippi Supreme Court

PETITION FOR WRIT OF CERTIORARI

HAROLD GREEN
Pro Se
558 Mullican Road
Florence, MS 39073
601-845-6378

QUESTIONS PRESENTED

(Q1) Did "Cleary make false statements to obtain a Certificate of Convenience and Necessity from the Public Service Commission"?

(Q2) Did the "Public Utilities Staff know "Cleary" could not and was not going to construct, operate and maintain a sewage treatment plant in this new area"?

(Q3) Did the "Public Utilities Staff" require "Cleary" to furnish mandatory documentation proving their eligibility to receive a certificate?

(Q4) Does the "Public Utilities Staff" have the statutory authority to use their discretion in determining the eligibility of "Cleary" to obtain a certificate?

(Q5) Did "Cleary" state, on oath, this "Centralized Sewage Treatment Plant" would be constructed upon approval and authorization from the "Public Service Commission"?

(Q6) Did "Cleary" and the "Public Utilities Staff" make false statements to the "Public Service Commission" for "Cleary" to obtain a certificate?

(Q7) What was the "Public Service Commission" required to comply with on becoming aware that the Public Utilities Staff had not required "Cleary" to furnish all fifteen (15) mandatory items found in "Appendix (A) Schedule (2)" to be eligible for a certificate?

(Q8) Did the "Public Service Commission", upon recommendation from the Public Utilities Staff, issue "Cleary" a certificate to "construct, operate and maintain a 'Sewer System' in the additional area"?

QUESTION PRESENTED – Continued

(Q9) Has "Cleary" constructed this "Sewer System"?

(Q10) Is the certificate issued to "Cleary" by the "Public Service Commission" specific and unambiguous in its construction and meaning?

(Q11) Why has the "Public Service Commission" failed to comply with mandatory laws governing certificate proceeding?

(Q12) What reason does "Cleary" give for applying to the "Public Service Commission" for a certificate to construct, operate and maintain a "Sewer System"?

(Q13) Are the reasons given in the above questions sufficient to warrant the action taken by the "Public Service Commission"?

(Q14) (A) How has "Cleary Water, Sewer and Fire District" been able to act with impunity throughout these proceedings? (B) Why did the "Public Service Commission" deny the petitioner the right to amend his complaint and then dismiss the complaint?

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CONSTITUTION

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STATUTE

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OPINIONS BELOW

The Mississippi Supreme Court's opinion is unpublished. App.1. The Mississippi Chancery Court opinion is also unpublished. App.29.

JURISDICTION

The Mississippi Supreme Court issued its opinion on September 17, 2009. This Court has jurisdiction pursuant to 28 U.S.C. § 1547.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides that:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

"Cleary" knew before applying for a certificate (A) they did not have the finances nor credit rating to borrow money to "construct, operate and maintain a Sewer System" in the water and fire area of the District. (B) Therefore, "Cleary was not going to construct this new Sewage Treatment Plant so as to furnish "sewer service" to the customers. Most of the exhibits listed here can be found in our brief of Feb. 4, 2008. Some may be a direct quote without an exhibit number.

(A1) "Cleary's application": "Application of Cleary Water, Sewer and Fire District to enlarge its certificated area for sewer service to make said area 'identical' to its certificated area for water and fire protection." (Exhibits – D1-2-3) This area for sewer service "Cleary" is applying to be "identical" with is a centralized sewage treatment and disposal plant constructed in 1980 for the "Private Community of Cleary Heights." Cleary furnishes sewer service to these customers. The documentation in (Exhibits – M15-M8) also (Exhibit – Info) clearly show, one (1) year before their application for a certificate, "Cleary" could not and was not going to construct a Sewage Treatment Plant so as to furnish "sewer service" to this new area, making this documented evidence a false statement to obtain the certificate they now possess. Throughout all of these proceedings their stance has been the same, with impunity.

(A2) Item (5) of application (Exhibit – D2) states "The financial reports of 'Cleary' are on file with the Commission." We have not found these reports in the records presented.

However, we have found the financial report for the year 2000, sent to the Board of Supervisors that was subsequently published in the Rankin County News dated Jan. 18, 2001. It shows expenditures exceed revenue by $55,167.00 for the year 2000. This trend continued from 2002 thru 2006 for a total of $220,122.00. We have no report since 2006. "Cleary" also states in item (5) "the expansion of the sewer service area will not jeopardize the financial well being of 'Cleary.'" This makes two (2) false statements in item (5). (Exhibits – D2-M13-14). From these and (Exhibit – M12 – pages 2-3) we get a clear picture that the "Public Utilities Staff knew "Cleary" could not and was not going to construct a new Sewage Treatment Plant, as promised and required by law. The "Public Utilities Staff duties "as described in (Rule 3) of Practice and Procedure" stated in part, "The primary function of the M.P.U.S. is investigative and advisory in nature.'"

(A3) The "Public Utilities Staff did not require "Cleary" to comply with the following mandatory items found in "Appendix (A) – Schedule (2) of the Certificate Proceedings; Items (6-7-8-9-10-11-13-14-15) (Exhibit – Q14). "Cleary" did not comply with "Rule 2K" (Exhibit – Q2) as stated in their application (Exhibit – D2 – Item 6). "Rule 2K" stated in part Any person having a substantial interest in the subject

matter of the proceeding or whose rights and liabilities may be materially affected thereby. See (Exhibit – R7) (SS Ordinance).

(A) We the property owners would have to connect to this proposed sewage treatment plant. We hereby have a substantial interest in the subject matter.

(B) Our rights to object to "Cleary's" application for a certificate to construct, operate and maintain a sewer system in our area has been purposely denied to us not being listed as interested persons.

(C) We would be liable for material and labor cost to connect to this proposed centralized sewer system. These and other requirements are listed in "Cleary's" Sanitary Sewer Use Ordinance, (Exhibit – R7). E.P.A. estimated cost totals $17,000 (Exhibit – M8) for each household. We would be forced by this ordinance to give these items we paid for plus the land they are on to "Cleary" who would then charge a monthly fee to be determined by "Cleary". "Cleary" now owns property on our property. We cannot sell or alter our property without "Cleary's" approval. Yes, we are truly the only persons that meet all three requirements to be listed as interested persons, though we have been denied that right, as defined by (Rule 2K) (Exhibit – Q2) and (Appendix A) (Schedule 2) (Item 13) (Exhibit – Q14).

(A4) The "Public Utilities Staff" does not have discretion in this matter. Under Rules of Practice and Procedure (Rule 3) reads in part "MPUS Duties." The

primary function of the MPUS is investigative and advisory in nature. The staff of MPUS shall perform such duties as are assigned to them by the "Executive Director." The "Public Utilities Staff" duties are to examine all applications to verify that mandatory documents are included before making their recommendation of approval or disapproval to the "Public Service Commission." The "Public Utilities Staff" did not require "Cleary Water, Sewer and Fire District" to include in their application the following mandatory items (6-7-8-9-10-11-13-14-15) listed in (Exhibit – Q14).

(A5) In "Cleary's" application for a certificate (Exhibit – D2 – Item 8) states, "The Cleary Water, Sewer and Fire District is agreeable to operating a water, sewer and fire utility system to serve the residents of the entire area, upon approval and authorization from the commission." This is a false statement made by "Cleary". (Exhibits – M8-M13-M14)

(A6) The "Public Utilities Staff" made a false statement to the "Public Service Commission" by approving "Cleary's" application and recommending the commission issue Cleary a certificate (Exhibits – F1-2-3-4) without "Cleary" supplying the mandatory documents necessary to be eligible for a certificate, (Exhibit – Q14), thereby making a false statement by each party.

(A7) Incomplete Filings: "Petitioners for a certificate that fail to comply with the requirements of these rules or that do not have attached to them the

supporting data will be docketed and assigned an identifying number, but the commission may decline to consider said petitioner or dismiss it, Sua Sponte, until compliance is achieved." The "Public Service Commission" has discretion only to "decline to consider said petition or dismiss it." The rest of this rule is mandatory. The P.S.C. has not complied with any part of this section (Rule 7 – F6).

(A8) On September 18, 2000, the "Public Service Commission" issued "Cleary Water, Sewer and Fire District" a "Supplemental Certificate of Public Convenience and Necessity." This certificate reads in part, "It is, therefore, ordered that: The request of Cleary Water, Sewer and Fire District for a Supplemental Certificate of Public Convenience and Necessity to serve an additional area, is hereby granted and approved so as to authorize and permit it to construct, operate and maintain a sewer system in the additional area hereinafter described." (Exhibits – F1-2-3-4).

(A9) "Cleary Water, Sewer and Fire District" has not constructed a "Centralized Sewer System" as applied for in their petition to the "Public Service Commission." "Cleary" stated upon oath that they would furnish "Sewer Service" to the residents of this new area. "Cleary" knew one (1) year before application, this Sewer Service was not going to be available to these residents. (Exhibits – D1-2-3) (Exhibits – M8-13-14). These are more false statements made by "Cleary" to obtain a certificate.

(A10) Absolutely: "Specific: in that the "certificate" states no less than five (5) times these words, "Construct, operate and maintain a sewer system." The words "Sewer Service" is stated four (4) times. The words "Sewer System" and "Sewer Services" are synonymous. The words and meaning thereof in the construction of this "certificate" are "specific" and are "unambiguous". (Exhibits – F1-2-3-4)

(A11) The following document can be found in "Appeal Record Volume I" page 000109 and 000110. Attorneys of Record include Wm. Bruce McKinley, Esquire Attorney for the P.S.C. and James A. Bobo, Esquire Attorney for CWSFD. The record reads in part, "Be it remembered that Cleary Water, Sewer and Fire filed its application, along with the required exhibits and documentation, on June 13, 2000." This is a false statement. Both attorneys knew "Cleary" did not supply the required exhibits and documentation to be eligible for a certificate. One of ten (10) required items is (Rule 2K). "Cleary" did not list any of its water only customers as "Interested Persons" as required by that rule. As such, we would have been "served a notice of the filing upon each," and we were not served this notice. In so doing, the "Public Service Commission" has denied the water only customers our "Civil Rights" by way of preventing a hearing whereby we could file a complaint objecting to the "Public Service Commission" issuing "Cleary Water, Sewer and Fire District" a certificate to "construct operate and maintain a sewage system in this new area." All three (3) of the involved agencies knew

"Cleary" could not and was not going to construct this new treatment plant. As stated, this is only one of many false statements made by "Cleary" and accepted by the "Public Utilities Staff" and the "Public Service Commission".

To get a clear picture of the difference between the required documentation in "Certificate Proceeding" (Exhibits – Q2 and Q14) and the documentation presented by "Cleary" in its application (Exhibits – D1-2-3), compare these two (2) exhibits. We freely understand our position and responsibilities as set forth in this quote, "A rebuttable presumption exists in favor of the action of an administrative agency, and the burden of proof is on the party challenging an agencies action." We respectfully submit the following. As the challenging party we believe we have shown in this and other documents evidence that proves "Cleary Water, Sewer and Fire District," the "PUS" and the "Public Service Commission" did in fact make many false statements to obtain this certificate, as alleged in our complaint (Exhibit – M4), and that the "Public Service Commission" has failed to comply with the mandatory laws governing the issuing of a certificate. Here are two (2) of these laws.

1. "Petitioners" – Petitions to enlarge, diminish or alter the boundaries of a certificate area shall be granted upon good cause shown and shall contain or be accompanied by the data and documentation shown in "Schedule 2" of "Appendix A". We cannot find in the records proof that "Cleary" complied with

any more than six (6) of the required fifteen (15) to be eligible for a certificate. (Exhibit – Q14). On becoming aware of this short fall of nine (9) items the "Public Service Commission's" mandatory obligations is as follows.

2. "Incomplete Filings" – "Petition for certificates that fail to comply with the requirements of these rules or that do not have attached to them the required supporting data will be docketed and assigned an identifying number, but the commission may decline to consider said petition or dismiss it, Sua Sponte, until compliance is achieved." The "Public Service Commission" does have the discretion to decline to consider or dismiss (Rule – 7). The "Public Service Commission" has not complied with either law.

(A12) (a) "Cleary" stated in part "The district does not want to risk expanding its sewer service into an area that is not certificated." (Exhibit – D3 – pg. 2 – Lines 2,3). This sounds reasonable enough.

(b) Lines 7-8-9 state "Recently the District had trouble with an individual allowing 'raw sewage' to run within a District water easement outside the sewer service area." Still reasonable enough except that this was not "raw sewage" or implying waste from the human bowels, but wastewater from a kitchen sink and clothes washing machine known as grey water, unacceptable but not as dangerous.

(c) Lines 9-10 state "Because of reduced Department of Health personnel within the county, a timely response could not be obtained to force the remedy of

this unsanitary situation." Still reasonable enough, except that other agencies should have been notified of this "unsanitary situation." Although the "Mississippi State Department of Health" has statutory authority in this area, the "Department of Environmental Quality", "Environmental Protection Agency" and the "United States Government" can act to protect the health of the public. No record that a complaint was filed with any of these agencies.

(d) Lines 11-12-13 state "Cleary can afford and will commit to undertake construction of improvement which are necessary and economically feasible and consistent with good stewardship." This sentence is not reasonable enough due to the fact "Cleary" knew one (1) year before application they could not financially afford to, nor were they going to construct a new sewage treatment plant to furnish sewer service to this new area, thereby making a false statement and covering it when "economically feasible" and "consistent with good stewardship." (Exhibit – (1) Info). Cleary used the words "economically feasible" in (Exhibit – D2 – Item 9) to minimize a promised statement in (Exhibit – D2 – Item 8). Can there be any question as to the lack of integrity in these statements?

(A13) We the Petitioners respectfully submit they are not. The "Issues and Facts" in this appeal brief are focused on laws governing "Certificate Proceeding." We further respectfully submit these laws are unambiguous and are a mandatory requirement before an applicant is eligible for a

certificate. We do further respectfully submit these laws are not subject to dismissal at the discretion of the "Public Service Commission" or any other agency. These laws were made to protect the public from unscrupulous applicants who would use a certificate to force their will upon the innocent.

(A14) (a) The answer to question no. 14 can be answered by this statement made by "Cleary" which reads in part, "When contacted about the District's plans in relation to the expansion of the area certificated for wastewater services, the District Manager, Kenn Munn, explained the decentralized wastewater program to the personnel of the Public Utilities Staff." At no time did the District or its personnel mislead the Commission or the MPUS in any way. (Exhibit – M12 – pg. 2-3). A further statement by the "Public Service Commission" stated in part, "Be it remembered that Cleary Water, Sewer and Fire District filed its application, along with the required exhibits and documentation on June 13, 2000." Attorneys of record as being "James A. Bobo, Esquire" (Attorney for CWSFD). "Wm. Bruce McKinley, Esquire" (Attorney for the MPSC). (Volume 1 – pg. 000109-110) in the appeal record. All of the above agencies plus the two attorneys knew that required documentation to be eligible for a certificate had not been met by "Cleary" and that "Cleary" had no intention of "constructing, operating and maintaining" a sewer system in the additional area. Unconcerned for the rights of the people of the district, best describes the action taken by the "Public

Service Commission" in issuing "Cleary Water, Sewer and Fire District" a certificate to "construct, operate and maintain a sewer system" in this new area. Knowing absolutely (a) That CWSFD had not furnished required documents to be eligible for a certificate. (b) The PSC did in fact issue CWSFD a certificate with impunity. (c) The PSC has not complied with laws pertaining to incomplete filings (Rule 7 – F6) nor has the PSC acted to force CWSFD to comply with the order of the certificate which is to construct, operate and maintain a sewer system in this new area or revoke the certificate. The reason given for action not taken by the PSC is it's not in the best "public interest". We are the "public" and hereby state that the action not taken by the PSC is not in the best interest of the public but rather in the best interest of the "Public Service Commission" which in this case has failed miserably to support our rights under the Constitution.

REASONS FOR GRANTING THE WRIT

The petitioner respectfully submits the following.

The year 1990 was the last year the U.S. Census Bureau did a survey on the number of "Individual Onsite Wastewater Disposal Systems" in the State of Mississippi. That number was 425,239 housing units. The number of people served by these IOWDS was 910,574. Most of these homes are supplied "Potable Water" from 1367 "Public Water Suppliers", including

"Cleary, Water and Sewer Fire District." All (3) parties will be affected by the decision of this court, none more so than these home owners.

These "Public Water Suppliers" will surely follow CWSFD's lead by taking ownership of the IOWDS in their district. The home owners will not be able to sell their homes or very little else, without the "Water Supplier's" permission. Plus, the homeowner will be charged a fee, determined by permission and a fee determined by the "Water Suppliers" to use the IOWDS. The only cost to the "Water Suppliers" is for them to apply for a certificate, no matter what its stated purpose is, pass an ordinance declaring ownership of the IOWDS. Presto, they have a ready made source of income, without strings attached.

The following are only some of the adverse effects the "Trial Court's" decision has upon the lives of these Mississippians in the leading up to and including the issuing purpose of a certificate to the CWSFD and to what purpose they are using this certificate.

On August 12, 2004, we filed a formal complaint with the "Public Service Commission", which is quote "complaint to vacate order granting supplemental Certificate of Public Convenience and Necessity." In this complaint we stated false statements were made to obtain that certificate, which is specific and is unambiguous in its purpose, that being to "construct, operate and maintain a Sewer System in a specified area of Rankin County." We presented only one of these false statements in this complaint. That being,

CWSFD had not constructed this ordered sewer system 48 months after receiving this certificate. In fact, some 96 months later they still have not complied with this order. We have presented documented evidence to the PSC and the "Trial Court" proving Cleary has made many false statements to obtain the certificate they hold.

The "Public Service Commission" dismissed our complaint on April 5, 2005 without addressing the documented evidence presented. The Chancery Court likewise failed to address this evidence and did affirm the PSC dismissal of our complaint.

We respectfully submit the following:

(a) Both the "Public Service Commission" and the Trial Court base their decisions on laws pertaining to a legally obtained certificate.

(b) Our complaint was and is, that the "Cleary Water, Sewer and Fire District" illegally obtained a certificate by making false statements in its application to the PSC for a certificate.

(c) These laws are found in "Certificate Proceedings" and clearly define one from the other.

(d) The application laws require 16 items of information accompany the application to be eligible for a certificate.

(e) The CWSFD did not furnish 10 of these items in their application.

(f) One of the 10 required items was "Rule 2K". This item was listed in CWSFD's application. However, this item did not list the "homeowners" in the "Water and Fire District" as "Interested Persons." In so doing, the CWSFD and the PSC denied these "homeowners" their "Civil Rights" to participate in the "Certificate Proceedings." The other required 9 items to be eligible for a certificate are found in "Appendix A" "Schedule 2" and are thus:

> Items (6) a general description of new facilities.
>
> (7) an itemized estimate of cost to the utility of all new investment.
>
> (8) a listing of all sources of funding.
>
> (9) an estimate of the impact of the cost of facilities upon base and rates.
>
> (10) the number of assured and prospective customers in (a) the new area; and

(b) existing certificated area.

> (11) a complete set of engineering plans and specifications.
>
> (13) an exhibit listing the names and addresses of all interested persons as defined in Rule 2K of the Commissioner's Rules of Practice and Procedure together with a certificate that the filing utility has served a notice of the filing upon each.

(14) a copy of all testimonies to be relied upon at hearing.

(15) a copy of the current balance sheet and income statement.

(g) These laws are mandatory as to what course of action the PSC is to take concerning "Incomplete Filings."

(h) The PSC issued CWSFD a certificate without requiring the above 10 mandatory items.

(i) The PSC has no discretionary authority to issue a certificate without all of the required items.

(j) These laws were made to prevent the very thing that has happened from happening.

(k) In this instance, the PSC has completely failed to guard the "Public Interest."

(l) The Shepherds left the gate unattended; Wolves will surely devour the Sheep.

(1) We respectfully submit that we the petitioners have presented evidence, through documents and sworn affidavits, proof that CWSFD did indeed make many false statements to obtain a certificate and that the PSC did assist them by not requiring all necessary items to be eligible for a certificate.

(2) We respectfully submit the governing authority as to what procedure

the PSC is following in "Incomplete Filings" (Rule 7 F6) quote "Petitions for certificates that fail to comply with the requirements of these rules or that do not have attached to them the required supporting data will be docketed and assigned an identifying number, but the Commission may decline to consider said petition or dismiss it, Sua Sponte, until compliance is achieved.

(3) We respectfully submit the governing authority to issue a certificate that is found in (Rule 2 K3) and (Appendix A, Schedule 2) (Exhibits – Q2-Q14). As stated, CWSFD did not meet these requirements nor did the PSC require them to do so before issuing the certificate.

(4) We respectfully submit both the CWSFD and PSC denied our rights to be listed as interested persons, as the law requires.

(a) In doing so, we were unable to participate in the Certificate Proceeding

(b) We were denied standing, thereby

(c) The PSC dismissed our complaint

(5) We respectfully submit we do have standing, by property owners automatically being liable for any and all things concerning that property.

(6) CWSFD's stated reason for applying for a certificate was to get permission from the PSC to construct, operate and maintain a centralized sewage treatment plant in our area so as to furnish sewer service to be identical to Cleary Height's' sewer service. It's not unreasonable to state this plant plus connecting to this new system will cost these property owners money and property damage. To say we have no standing to take the action we have taken because we did not list in our complaint some incurring, lost damage, harmed or threat of injury, or harm to which we would suffer. This is arbitrary and is not consistent with the laws governing Certificate Proceeding.

(7) We respectfully submit the governing laws that the CWSFD, PSC and the Trial Court used in the actions they have taken against the homeowners of this water district are not applicable in these proceedings. Those laws are used only when an applicant has complied with all requirements necessary to be eligible for a certificate. CWSFD has not met those requirements nor has the PSC required them to do so, thereby making this contested certificate illegally obtained and those laws used in defense of their actions null and void.

(8) We the Petitioners respectfully submit from the evidence presented, the

certificate granted by the PSC to CWSFD was unlawfully obtained as stated in our complaint. In the "Public Interest" and for the substantial rights of 910,574 Mississippians who use individual onsite wastewater disposal systems, we respectfully ask this "Honorable Court" to weigh the evidence and to please disregard the lack of professionalism in its presentation.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for writ of certiorari.

Respectfully submitted,

HAROLD GREEN
Pro Se
558 Mullican Road
Florence, MS 39073
601-845-6378

Supreme Court of Mississippi
Court of Appeals of the States of Mississippi
Office of the Clerk

Kathy Gillis
Post Office Box 249
Jackson, Mississippi
39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi
39201-1082
e-mail:sctclerk@mssc.
state.ms.us

September 17, 2009

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 17th day of September, 2009.

Supreme Court Case # 2008-CC-01618-SCT
Trial Court Case # 57,085

Harold L. Green v. Cleary Water, Sewer & Fire District

Affirmed. Appellant taxed with costs of appeal.

* NOTICE TO CHANCERY/
CIRCUIT/COUNTY COURT CLERKS *

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

IN THE SUPREME COURT OF MISSISSIPPI

No. 2008-CC-01618-SCT

HAROLD L. GREEN

v.

CLEARY WATER, SEWER & FIRE DISTRICT

DATE OF JUDGMENT:	09/03/2008
TRIAL JUDGE:	HON. DAN H. FAIRLY
COURT FROM WHICH APPEALED:	RANKIN COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	HAROLD L. GREEN (PRO SE)
ATTORNEY FOR APPELLEE:	JAMES A. BOBO
NATURE OF THE CASE:	CIVIL – STATE BOARDS AND AGENCIES
DISPOSITION:	AFFIRMED: – 09/17/2009
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE GRAVES, P.J., RANDOLPH AND PIERCE, JJ.

RANDOLPH, JUSTICE, FOR THE COURT:

¶1. This is an appeal from decisions by the Mississippi Public Service Commission ("Commission") denying a motion to amend, and then dismissing the complaint and the Rankin County Chancery Court's

order affirming the Commission. The complaint challenged the Commission's grant of a Supplemental Certificate of Public Convenience and Necessity ("Supplemental CCN") to the Cleary Water, Sewer and Fire District ("Cleary") in September 2000. This Court dealt with related matters in ***Green v. Cleary Water, Sewer & Fire District***, 910 So. 2d 1022 (Miss. 2005) ("***Green I***"), *cert. denied*, 547 U.S. 1098, 126 S. Ct. 1883, 164 L. Ed. 2d 568 (2006).

FACTS AND PROCEDURAL HISTORY

¶2. The Cleary Heights Water and Sewer District ("Cleary Heights") was created in 1980. That same year, the Commission issued Cleary Heights a Certificate of Convenience and Necessity ("CCN") to provide sewer services in a specified area in the Cleary Heights community in southwest Rankin County. In 1986, Cleary Heights combined operations with the Cleary Fire Protection District, and was renamed Cleary Water, Sewer and Fire District. Under the CCNs in effect at that time, Cleary continued to operate a sewer for the originally-specified area, but provided fire protection and potable water service to a larger area. Harold Green ("Green") resides in the larger area which was provided water service and fire protection, but was not served by Cleary's centralized sewer system. Residents of that area, including more than 700 households and other customers, use individual on-site wastewater disposal systems ("IOWDS").

¶3. In 2000, Cleary sought to increase the sewer-service area so that it would be identical to the area being provided water service and fire protection. Cleary applied to the Commission for a supplemental CCN to enlarge the sewer-service area. Prior to the approval of the supplemental CCN, Cleary adopted a new Sanitary Sewer Use Ordinance, which required all property owners to connect to "a public sanitary sewer" if access was available, or later became available, within one hundred feet of the property. Anyone installing a new IOWDS would have to have it inspected and approved by the district. Residents with existing IOWDSs would have to operate them in a sanitary manner.

¶4. Cleary asserted in its application for the supplemental CCN that it was "ready, willing and able to construct, operate and maintain a sewer system so as to render sewer service to the public for compensation in the additional area proposed to be served." In September 2000, after notice and a hearing, the Commission granted the supplemental CCN. The Commission found that (1) Cleary was authorized and permitted to "construct, operate and maintain a sewer system in the additional area," (2) all persons requesting sewer service in the new area would be served at the previously-approved rates, and (3) statutory notice requirements had been met and "[n]o protest or objection [had] been filed." The Commission also stated in its order, "Construction of the proposed sewer system shall be commenced within

six (6) months from the effective date of this Order or this Certificate *may* be cancelled." (Emphasis added.)

¶5. In June 2001, Cleary adopted a Decentralized Wastewater Use Ordinance ("Ordinance"). ***Green I,*** 910 So. 2d at 1024-25. With some exceptions, the ordinance essentially codified the rules that had existed prior to the grant of the supplemental CCN. The ordinance did not call for a new sewer system to be constructed, nor did it provide for an extension of the existing central sewer to the residences in the new area. The ordinance required IOWDS owners in the new area to have them inspected within one year, and annually thereafter. ***Id.*** at 1025. The inspection results were to be sent to Cleary to prove that the system was working properly. ***Id.*** Owners of properly-functioning IOWDSs were not otherwise affected. Owners unable to show a properly-working IOWDS would be required to install a new system. ***Id.*** Cleary was to accept ownership of the new IOWDS and maintain them for the property owner for a monthly fee to be added to the water bill. ***Id.*** Prior to adopting the ordinance, Cleary published a Notice of Public Hearing concerning the proposal. ***Id.*** After receiving no objections at the public hearing, Cleary adopted the ordinance. ***Id.***

¶6. In ***Green I,*** Green and more than one hundred other residents of the affected area challenged Cleary's authority to enact the ordinance. ***Id.*** This Court held that Cleary had such authority under its general police powers. ***Id.*** at 1031. However, the Court declined to affirm summary judgment in favor

of Cleary, finding that genuine issues of material fact existed as to whether the ordinance conflicted with Mississippi Department of Health ("MDH") regulations and whether the ordinance constituted a taking. ***Id.*** The taking issue became moot when Cleary amended the ordinance, removing the clause providing for Cleary to take ownership of the IOWDSs. The record does not reflect how the MDH issue was resolved.

¶7. In August 2004, while ***Green I*** was still in litigation,[1] Green filed a separate complaint, in which he requested that the Commission vacate its order granting the supplemental CCN. He argued that the Commission had reserved its right to cancel the supplemental CCN if sewer construction did not begin within six months, and asserted that nearly forty-eight months had passed without commencement of construction. He asserted that this failure proved that Cleary had made "false statements" in its bid to gain approval of the supplemental CCN.

¶8. In December 2004, Green moved to amend his complaint to assert that notice of the Commission's hearing had not been proper or adequate. Green argued that the only notice given was for the enlargement of the sewer-service area, without notice of

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[1] Just before this filing, the Court of Appeals had held for Cleary, affirming its motion for summary judgment. ***Green v. Cleary Water, Sewer & Fire Dist.***, 910 So. 2d 1, 5-6 (Miss. Ct. App. 2004), *cert. granted,* 892 So. 2d 824 (Miss. 2005).

intention to set up a decentralized system. Green claimed that such a system was very rare in Mississippi, and could not have been anticipated by the notice given.

¶9. In February 2005, the Commission denied Green's motion to amend, stating that it had complied with statutory notice requirements by publishing a notice of hearing in a newspaper of general circulation published in Jackson, and a newspaper of general circulation in the county where the certificated area is located. The Commission found that Green was seeking notice beyond that required by statute. *See* Miss. Code Ann. § 77-3-47 (Rev. 2001).

¶10. On April 5, 2005, the Commission dismissed Green's original complaint without a hearing. In its dismissal order, the Commission found that Green's only basis for seeking the cancellation of the supplemental CCN was that construction of a sewer had not begun within six months. The Commission noted that the order granting the supplemental CCN, as with all of its certification orders where timing is not crucial, used permissive language ("Certificate may be cancelled"), not mandatory language. Thus, the Commission was not required to cancel the certificate, but had the option to do so, if warranted or advisable. The Commission also found that the only method for cancellation of a CCN is set forth by statute in Mississippi Code Section 77-3-21 (Rev. 2001). That statutory process requires a finding that the utility is not "rendering reasonably adequate service," which Green did not allege in his complaint. The

Commission noted also that, after Green filed his complaint, Cleary filed a "Satisfaction of Complaint," in which it offered to run a sewer line to Green's house. Green did not respond to the offer; thus the Commission found that Green's issue was not inadequacy of service. The Commission cited Rule 11D of the Mississippi Public Service Commission Public Utilities Rules of Practice and Procedure ("the Commission's rules"), which allows it to dismiss a complaint without a hearing, if "not necessary to the public interest or for the protection of substantial rights." The Commission found also that (1) Green had shown no "direct and substantial interest in the subject matter of the complaint," and (2) Cleary had not made any false statements to the Commission.

¶11. On April 21, 2005, Green appealed to the Chancery Court of Rankin County on the dismissal of his complaint, as well as the denial of his motion to amend. Later, Green filed a Motion to Compel Supplementation of the Record, alleging that the supplemental CCN was not lawfully granted because Cleary had not provided all the documents required under the Commission's rules. Up to this point in the proceedings, Green had been represented by counsel. Both Green and his attorney submitted briefs to the chancellor. At oral argument before the chancellor, Green appeared pro se. Although he has continued to

proceed pro se, he claims to represent 160 petitioners.[2]

¶12. In its order affirming the Commission, the chancery court analyzed the following issues: (1) Whether the court had jurisdiction over the Commission's decisions in 2000 and 2005, (2) whether Green had standing, (3) whether the Commission had committed reversible error in dismissing the complaint, and (4) whether the Commission may dismiss a complaint without a hearing.

¶13. The chancellor found that Green was not appealing from the 2000 grant of the supplemental CCN, but even if he was, the court would be without jurisdiction because the appeal was not brought within thirty days of the order. *See* Miss. Code Ann. § 77-3-67(1) (Rev. 2001). The court further held that it was without jurisdiction over the Commission's denial of Green's motion to amend. The court then found jurisdiction over the dismissal, as Green had perfected his appeal within thirty days of the dismissal order.

¶14. On the issue of standing, the chancellor found that Green did have an *interest* in the litigation because a decision rendered by the court could affect

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[2] Green closes his pleadings with the phrase, "Respectfully submitted by 160 petitioners." Green obtained 160 signatures on a petition to the Rankin County Board of Supervisors asking it to intervene with the Commission to have the supplemental CCN canceled.

his interest, as a property owner, in the certificated area. The court found further that Green had alleged no loss, damage, injury, or harm; nor had he shown any potential threat of any such loss, damage, injury, or harm. The Court rejected Green's argument that he was not given proper notice of Cleary's true intentions, because the issue of the supplemental CCN was expansion of the service area, not what type of service would be provided. The chancellor affirmed the Commission's dismissal of the complaint. Finally, the chancellor held that the Commission was within its authority to dismiss the complaint without a hearing, because such a hearing was not necessary to the public interest or to protect substantial rights.

ISSUES

¶15. Green raises fourteen issues in his pro se brief to this Court. These can be reduced to four, as follows: (1) whether the 2000 supplemental CCN was improperly granted based on Cleary's and the Commission staff members' false statements, which were known by the Commission to be false; (2) whether the 2000 supplemental CCN was illegally granted because the Commission failed to follow its own rules, requiring certain documents to be filed; (3) whether the Commission was required to cancel the supplemental CCN because of Cleary's failure to construct a sewer system; and (4) whether it was error for the Commission to deny Green's motion to amend and to dismiss his complaint.

¶16. In fairness to Green, we will address the arguments made by Green's counsel in his chancery court brief. The issues raised were: (1) whether the dismissal was arbitrary, capricious, and not supported by substantial evidence; (2) whether it was error for the Commission to deny a hearing; (3) whether Green has standing; (4) whether the complaint should have triggered an "adequacy of service" proceeding under Mississippi Code Section 77-3-21 (Rev. 2001); (5) in the alternative, whether the statute is inapplicable; (6) whether administrative decisions based on legal errors are entitled to deference; (7) whether the dismissal violated Green's constitutionally-guaranteed rights; (8) whether the ordinance constituted an improper taking; (9) whether Green was adequately notified of the 2000 grant of supplemental CCN; and (10) if notice was inadequate, making the statutory appeal deadline inapplicable, whether the court had jurisdiction.

¶17. Green identifies *inter alia* the Commission's 2005 orders as issues for this Court to review. Although he is in compliance with the requirement that he identify any such issues under the "Statement of Issues" heading of his appeal brief, in his argument of these issues, he cites no authority. *See* M.R.A.P. 28(a)(3). Thus, he is in violation of Mississippi Rule of Appellate Procedure 28(a)(6). Nonetheless, his attorney's chancery-court brief complies with the above rules, and this Court may suspend the requirements of a rule. *See* M.R.A.P. 2(c); ***United Am. Ins. Co. v. Merrill,*** 978 So. 2d 613, 631 (Miss.

2007) (arguments that cited no authority, in violation of Rule 28(a)(6), were addressed "for informational purposes"); ***Vicksburg Partners v. Stephens***, 911 So. 2d 507, 512-13 (Miss. 2005), overruled on another issue by ***Covenant Health & Rehab. of Picayune, LP v. Estate of Moulds ex. rel. Braddock***, 2009 WL 2393918 (Miss. August. 6, 2009) (a pro se appellee submitted no brief; Court used "the briefs and pleadings submitted to the trial court by her trial attorneys"). Cleary cites ***Entergy Mississippi, Incorporated v. Bolden***, 854 So. 2d 1051 (Miss. 2003), which states that "'an argument unsupported by cited authority need not be considered by the Court.'" ***Id.*** at 1057 (quoting ***Dowdle Butane Gas Co. v. Moore***, 831 So. 2d 1124, 1136 (Miss. 2002)). The language "need not" allows this Court to consider such an argument. Further, in ***Bolden***, the appellant was not proceeding pro se, and there were no briefs available from an intermediate appeals court as we have here. ***Id.*** at 1051. Therefore, we suspend enforcement of Rule 28(a) and consider the issues raised, and the arguments made, by Green's attorney.

¶18. The issues discussed below are as follows:

(1) Whether this Court has jurisdiction over the decisions made by the Commission in 2000 and 2005.

(2) Whether Green has standing to maintain this action on appeal.

(3) Whether it was reversible error to deny Green's motion to amend his complaint.

(4) Whether it was reversible error to dismiss Green's complaint.

(5) Whether it was reversible error to deny Green a hearing.

(6) Whether the complaint should have triggered an "adequacy of service" proceeding.

DISCUSSION

¶19. Our standard of review is as follows:

> A court faced with the review of a decision of an administrative agency is very limited as to the scope and depth of its inquiry. Rule 5.03 of the Uniform Circuit and County Court Rules provides that the reviewing court will entertain an appeal only to determine if the order or judgment of the lower authority was: 1) supported by substantial evidence; 2) arbitrary or capricious; 3) beyond the power of the lower authority to make; or 4) violated some statutory or constitutional right of the complaining party.

Thomas v. Pub. Employees' Ret. Sys., 995 So. 2d 115, 118 (Miss. 2008) (citing ***Fulce v. Pub. Employees' Ret. Sys.***, 759 So. 2d 401, 404 (Miss. 2000)); *see also* Miss. Code Ann. § 77-3-67(4) (Rev. 2001). "A rebuttable presumption exists in favor of the action of an administrative agency, and the burden of proof is on the party challenging an agency's action." ***Hill Bros. Constr. & Eng'g Co. v. Miss. Transp. Comm'n***, 909 So. 2d 58, 64 (Miss. 2005)

(citing ***Pub. Employees' Ret. Sys. v. Marquez***, 774 So. 2d 421, 425 (Miss. 2000)).

I. Whether this Court has jurisdiction over the decisions made by the Commission in 2000 and 2005.

A. The Grant of a Supplemental CCN in 2000.

¶20. The chancellor found that Green was not appealing the grant of the supplemental CCN, but if he had been, his appeal would have been time-barred. Thirteen of the fourteen issues brought to this Court by Green deal with the Commission's 2000 grant of the supplemental CCN. His attorney argued in his chancery court brief that the court had jurisdiction to revoke the supplemental CCN. Thus, Green is attempting to appeal the supplemental CCN decision by way of appealing the Commission's orders in 2005. However, the chancellor correctly found that the court was without jurisdiction to hear such an appeal. Mississippi Code Section 77-3-67(1) (Rev. 2001) requires an appeal of an order of the Commission to be filed within thirty days of the order. ***Id.*** Green's appeal was filed more than four years after the order granting the supplemental CCN. This Court has stated, "Where an appeal is not perfected within the statutory time constraints no jurisdiction is conferred on the appellate court; and the untimely action should be dismissed." ***Bowen v. DeSoto County Bd. of Supervisors,*** 852 So. 2d 21, 23 (Miss. 2003) (citing ***Newell v. Jones County,*** 731 So. 2d 580 (1999)). *See*

also ***Dependents of Townsend v. Dyer Woodturnings, Inc.,*** 459 So. 2d 300, 302 (Miss. 1984) (dismissed for lack of jurisdiction; notice of appeal not timely submitted to a state commission).

¶21. Further, as Green was not a party to the grant of the supplemental CCN, he may not appeal from that decision. *See* Miss. Code Ann. § 77-3-67(1) (Rev. 2001) ("any party aggrieved by any final finding, order or judgment of the commission . . . shall have the right . . . of appeal to the chancery court"); *see also* ***In re Appeal of Final Decisions of Pub. Serv. Comm'n***, 604 So. 2d 218, 219-22 (Miss. 1992) (appeal by electricity customers dismissed, as they had not properly intervened to become parties to a rate-setting decision). This Court has held that "'statutes which allow a 'party' to appeal, as a rule, limit the right to those who were original parties to the action or proceeding.'" ***Id.*** at 222 (quoting ***Ridgway v. Scott***, 237 Miss. 400, 405, 114 So. 2d 844, 845 (1959)).

¶22. Green argues that the appeal deadline in Mississippi Code Section 77-3-67 is inapplicable because the notice did not give him "fair notice and an opportunity to be heard." ***Miss. Power Co. v. Goudy***, 459 So. 2d 257, 263, 271 (Miss. 1984) (the Commission's rate-approval procedure survived constitutional challenge). Green does not deny that notice was made in accordance with the statute, but claims that notice was inadequate because it did not inform him that a decentralized system would be implemented. The applicable notice statute requires the following:

> The commission shall fix the time and place of hearings and shall serve notice thereof, not less than twenty (20) days before the time set for such hearings. . . . Notice of all such hearings shall be given the persons interested therein by mailing such notice to each public utility which may be affected by any order resulting therefrom and by publication in a newspaper of general circulation published in Jackson, Mississippi, and, in a proceeding for a facility certificate or an area certificate, by publication in a newspaper of general circulation in the county or counties where the facility or area is located.

Miss. Code Ann. § 77-3-47 (Rev. 2001). It is undisputed that the Commission filed a timely notice in The Clarion-Ledger, a newspaper published in Jackson and of general circulation in the City of Jackson and in Rankin County. The remaining cases cited by Green on this issue all are clearly distinguishable.

¶23. The Commission found that Green was attempting to impose a notice requirement (the type of sewer to be utilized) beyond that required by statute. *See* Miss. Code Ann. § 77-3-47 (Rev. 2001). The statute does not require such notice. Green was notified of the planned implementation of the decentralized sewer system, not at the time of the expansion of the certificated area, but the next year when Cleary adopted the ordinance. Cleary published notice concerning the adoption of the ordinance, and then passed the ordinance after a public hearing at which

no one expressed opposition. ***Green I***, 910 So. 2d at 1025.

¶24. Green's central complaint is that Cleary pulled a "bait and switch" on him and the other petitioners, by claiming it would construct a sewer system for the area, while having no intent to do so. Cleary's manager said in a newspaper article as early as 2002 that the decentralized sewer system was "not something we did overnight. This was two or three years in the making." Cleary's manager also said that a centralized system would cost approximately $17,000 per home. The allegations against Cleary are of no event, for, even if the chancellor had granted them credence, they do not alter the fact that the appeal was untimely filed.

B. The Denial of Leave to Amend and the Dismissal of the Complaint in 2005.

¶25. Following the same analysis, the chancellor found that the chancery court was without jurisdiction to hear an appeal of the denial of Green's motion to amend. The thirty-day appeal deadline applies to any "final finding, order or judgment of the commission. . . ." Miss. Code Ann. § 77-3-67(1) (Rev. 2001). The Commission issued its "Order Denying Motion" on February 23, 2005. Green did not appeal until April 21, 2005. Thus, if the statute applies to the February order, the chancellor was correct. However, in ***Mississippi Power Company v. Mississippi Public Service Commission***, 240 Miss. 621, 128

So. 2d 351 (1961), this Court affirmed a chancery court's dismissal of an interlocutory appeal from the Commission's procedural orders. ***Id.*** at 629. This Court held that it was without jurisdiction over interlocutory appeals from the Commission. ***Id.*** at 627, 629. In doing so, the Court applied a prior version of the applicable statute, section 7716-26 of the Mississippi Code of 1942, which has not been amended in any way relevant to this issue. Therefore, Green was not required to appeal the denial of his motion to amend within thirty days of the order. If he had, as an interlocutory appeal, it would have been properly dismissed and remanded to the Commission. The thirty-day appeal deadline applies only to the final order issued April 5, 2005. Thus, the chancery court did have jurisdiction to consider the order denying Green's motion to amend. Further, the chancery court had jurisdiction to entertain an appeal of the April 5, 2005, dismissal of Green's complaint. Green appealed within the thirty-day statutory deadline of the final order dismissing his complaint. *See* Miss. Code Ann. § 77-3-67(1) (Rev. 2001).

II. Whether Green has standing to maintain this action on appeal.

¶26. Standing is a legal question; thus the decision of the Commission on this matter is not entitled to the same level of deference as cited *supra*. The applicable standard of review is as follows:

> The order shall not be vacated or set aside either in whole or in part, *except for errors of*

> *law*, unless the court finds that the order of the commission is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the commission, or violates constitutional rights.

Miss. Code Ann. § 77-3-67(4) (Rev. 2001) (emphasis added).

¶27. Cleary cites rule 11B(1) of the Commission's rules, which states that a complainant "must affirmatively show . . . a direct and substantial interest in the subject matter. . . ." Code Miss. R. 26-000-001 (2008). Green cites caselaw requiring the assertion of a "colorable interest . . . ***or*** . . . an adverse effect. . . ." ***City of Belmont v. Miss. State Tax Comm'n***, 860 So. 2d 289, 296 (Miss. 2003); ***State v. Quitman County***, 807 So. 2d 401, 405 (Miss. 2001) (emphasis added). Both the Commission and the chancery court held that Green was without standing. The Commission found that Green had shown no justiciable interest. The chancellor used a two-step analysis, finding that it was "clear" that Green had an *interest,* as a decision of the court "could affect an interest Green has in his property." However, the chancellor found Green to be *without standing* because he had alleged no injury or threat of an injury. While it may be true that Green cited no injury, that does not equate to a lack of standing. He claims injury from the fact that he would have expenses in connecting to a central sewer system, although there are no current plans to construct or extend the sewer into Green's

area. Green also claims injury from Cleary's plans to take ownership of IOWDSs, but that claim is moot, as the ordinance no longer includes such a clause.

¶28. Despite the lack of showing of an injury, Green could still have standing. This Court has stated, "It is well settled that 'Mississippi's standing requirements are quite liberal.'" ***Quitman County***, 807 So. 2d at 405 (quoting ***Dunn v. Miss. State Dep't of Health***, 708 So. 2d 67, 70 (Miss. 1998)). This liberality is due to the lack of "cases and controversies" language in Mississippi's Constitution as compared to Article III, Section 2 of the U.S. Constitution. ***Quitman County***, 807 So. 2d at 405. "Therefore, this Court has been 'more permissive in granting standing to parties who seek review of governmental actions.'" ***Id.*** (quoting ***Van Slyke v. Bd. of Trs. of State Insts. of Higher Learning***, 613 So. 2d 872, 875 (Miss. 1993)). In ***USPCI of Mississippi v. State ex rel. McGowan***, 688 So. 2d 783 (Miss. 1997), this Court held that "the 'standing' requirement . . . allow[s] a private citizen to challenge governmental actions contrary to law where the actions would otherwise escape challenge. . . ." ***Id.*** at 789.

¶29. The test for standing in Mississippi is as follows: "Parties may sue ***or*** intervene where they assert a colorable interest in the subject matter of the litigation *or* experience an adverse effect from the conduct of the defendant, or as otherwise authorized by law." ***City of Belmont***, 860 So. 2d at 296 (emphasis added) (citations omitted). *See also* ***City of Starkville v. 4-County Elec. Power Ass'n***, 909

So. 2d 1094, 1104 (Miss. 2005). The chancellor found correctly that Green had an interest in the litigation. As Green is a resident of the certificated area, a decision by the Commission may affect an interest he has in his property. However, in his apparent attempt to resurrect ***Green I*** claims, he pleaded no injury, loss, harm, or the threat of same. His 2004 complaint would be subject to an analysis akin to that of Mississippi Rule of Civil Procedure 12(b)(6), and therefore, was subject to dismissal under MPSC Rule 11B(3). There being no new claim offered, we cannot say there is an inconsistency with the Commission's rule, which "cannot supersede the requirements of . . . the pertinent rules of law." ***Capital Elec. Power Ass'n v. Miss. Power & Light Co.***, 240 Miss. 139, 153, 125 So. 2d 739, 744 (1961).

III. Whether it was reversible error to deny Green's motion to amend his complaint.

¶30. Green moved to amend his complaint to say that notice of the supplemental CCN was not proper or adequate because he received no notice that a decentralized system would be used. In its order denying the motion, the Commission noted that the statutory notice requirements had been met, and stated that Green was seeking to impose a notice requirement beyond that required by statute. The chancellor treated this as a moot issue, for he already had found that the court had no jurisdiction over this matter. Since jurisdiction was proper, we consider this issue.

¶31. The Commission's rules do not explicitly grant the power to deny a motion to amend, but as an administrative agency "in the exercise of judicial or quasi-judicial powers," the Commission has that authority. ***Love v. Miss. State Bd. of Veterinary Exam'rs***, 230 Miss. 222, 230, 92 So. 2d 463, 467 (1957). "Administrative agencies are, as a general rule, unrestricted by the technical or formal rules of procedure which govern trials before a court." ***Id.*** Specifically, the Mississippi Rules of Civil Procedure are not applicable at administrative proceedings. ***Miss. Real Estate Appraiser Licensing & Certification Board. v. James***, 730 So. 2d 1135, 1139 (Miss. 1999).

¶32. Green cites Rule 11B(3) of the Commission's rules, alleging that the Commission violated its own rule by not notifying Green and his attorney of Green's right to amend. The rule reads as follows:

> Procedure. Upon the filing of such a complaint, the Commission will immediately examine the same to determine whether it alleges a prima facie case and conforms to these rules. If the Commission is of the opinion that the complaint does not allege a prima facie case or does not conform to these rules, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time.

Code Miss. R. 26-000-001 (2008). The rule applies to the original complaint, for which there would have

been no reason to have notified Green or his attorney. Further, the rule uses permissive, not mandatory, language regarding the opportunity to amend. The remainder of Green's argument refers to alleged problems with the 2000 grant of a supplemental CCN for which the time to appeal has lapsed. As we find that the Commission did not commit reversible error in denying Green's motion to amend, the result, although for a different reason than articulated by the chancellor, is the same.

IV. Whether it was reversible error to dismiss Green's complaint.

¶33. The Commission dismissed Green's complaint for two reasons: (1) The statutory procedure under Mississippi Code Section 77-3-21 (Rev. 2001) is the exclusive method for canceling a CCN. It requires a finding that a utility is not providing "reasonably adequate service," a contention Green did not allege. (2) Because of the permissive language in the supplemental CCN, the Commission was not required to cancel it when sewer construction did not commence within six months. The chancellor used the same analysis in affirming the Commission.

¶34. "'Substantial evidence means more than a scintilla or suspicion.'" ***Miss. State Dep't of Health v. Baptist Mem'l Hosp.-DeSoto, Inc.***, 984 So. 2d 967, 975 n.13 (Miss. 2008) (quoting ***Miss. State Dep't of Health v. Natchez Cmty. Hosp.***, 743 So. 2d 973,

977 (Miss. 1999)). This court has defined arbitrary and capricious as follows:

> "Arbitrary" means fixed or done capriciously or at pleasure. An act is arbitrary when it is done without adequate determining principle; not done according to reason or judgment, but depending upon the will alone, – absolute in power, tyrannical, despotic, nonrational, – implying either a lack of understanding of or a disregard for the fundamental nature of things. "Capricious" means freakish, fickle, or arbitrary. An act is capricious when it is done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles.

Hill Bros. Constr., 909 So. 2d at 70 (quoting ***In re Hous. Auth. of Salisbury***, 70 S.E.2d 500, 503 (N.C. 1952)).

¶35. Mississippi Code Section 77-3-21 (Rev. 2001) allows the Commission to make findings on whether a utility is providing "reasonably adequate service." ***Id.*** The Commission may order a utility to correct specified problems, and if the utility fails to do so, the Commission may revoke a CCN if it finds that revocation would be in the "best interest of the consuming public. . . ." ***Id.*** This Court has held that this statutory process is the "exclusive method" for cancellation of CCNs. ***Delta Elec. Power Ass'n. v. Miss. Power & Light Co.***, 250 Miss. 482, 506-07, 149 So. 2d 504, 511 (1963) ("The statutory expression

of one method for cancellation of certificates is justly to be construed as an exclusion of other methods").

¶36. The order granting the supplemental CCN stated, "Construction on the proposed sewer system shall be commenced within six (6) months from the effective date of this Order or this Certificate *may* be canceled." (Emphasis added.) Rule 7A(4) of the Commission's rules allows the use of mandatory language requiring commencement within 180 days, leading to automatic voiding of a CCN if the deadline is not met. *See* Code Miss. R. 26-000-001. The Commission submits that it uses this mandatory provision when timing is crucial. Here, timing was not crucial, and the permissive language merely allowed the Commission to begin revocation proceedings if necessary. Green's arguments on this issue are without merit.

¶37. The rest of Green's argument against the dismissal is based on claims of the following: (1) an inadequate and improper notice of the 2000 supplemental CCN proceedings, (2) a taking of his property, and (3) false statements and concealment of facts by Cleary and the Commission and its staff. All these issues have been dealt with elsewhere in this opinion. Based on the analysis above, we find that the Commission did not commit reversible error in dismissing Green's complaint.

V. Whether it was reversible error to deny Green a hearing.

¶38. The Commission cited Commission Rule 11D, which allows for the dismissal of a complaint without a hearing if such a hearing is "not necessary to the public interest or for the protection of substantial rights." Code Miss. R. 26-000-001. The Commission justified this by stating the following: (1) Cleary had explained the delay in sewer implementation, (2) Green had no direct and substantial interest in the subject matter, (3) Green had not alleged inadequate service, and (4) the Commission was not required to revoke the supplemental CCN if sewer construction did not begin in six months. The chancellor affirmed the Commission's ruling, using the same analysis.

¶39. The Commission is authorized, by a Commission rule (11D) and by statute, to dismiss a complaint without a hearing. *See* Code Miss. R. 26-000-001; Miss. Code Ann. § 77-3-47 (Rev. 2001). *See also* ***Arnold Line Water Ass'n v. Miss. Pub. Serv. Comm'n***, 744 So. 2d 246, 250 n.2 (Miss. 1999). A hearing was "not necessary in the public interest or for the protection of substantial rights." Miss. Code Ann. § 77-3-47 (Rev. 2001). Green's rights were not infringed by the lack of a hearing. As noted elsewhere, (1) the takings issue, as alleged in ***Green I***, is now moot; and (2) the statutory notice requirements were satisfied. *See* ***Green I***, 910 So. 2d at 1030-31. The public interest would not have been served by granting Green a hearing, which would have been

futile. We find that the Commission did not commit reversible error in denying Green a hearing.

VI. Whether the complaint should have triggered an "adequacy of service" proceeding.

¶40. Neither Green's complaint, nor his aborted amendment, alleged any inadequacy of service on the part of Cleary. Mississippi Code Section 77-3-21 (Rev. 2001) is the exclusive method by which the Commission may cancel a CCN. ***Delta Elec. Power Ass'n***, 149 So. 2d at 511. The Commission may call for hearings on adequacy of service on its own motion. *See* Miss. Code Ann. § 77-3-21 (Rev. 2001). Alternatively, the Commission is obliged to hold such hearings if at least ten percent of a public utility's subscribers file a complaint alleging inadequate service. *See* Miss. Code Ann. § 77-3-11(5) (Rev. 2001).

¶41. Green argues that his complaint should have been taken as an allegation of inadequate service. Green attempts to buttress his argument by stating that (1) he was joined by 122 others in ***Green I***, and (2) he obtained 160 signatures on his petition asking the Rankin County Board of Supervisors to intervene with the Commission. *See* ***Green I***, 910 So. 2d at 1024. It is true that either of these numbers (122 or 160) represents a sufficient number of complainants. However, none of Green's arguments can make up for the fact that he did not allege any inadequacy of service in his complaint to the Commission. Further, none of the other "petitioners" actually joined in

Green's complaint to the Commission. We find that the Commission did not err by failing to institute adequacy of service proceedings against Cleary.

CONCLUSION

¶42. This Court has jurisdiction over the orders of the Commission in 2005, but not over the grant of the supplemental CCN in September 2000. Green has standing to bring this action. It was not reversible error for the Commission to (1) deny Green's motion to amend his complaint, (2) dismiss Green's complaint, (3) deny a hearing, (4) decline to institute adequacy of service proceedings. Although we employ a different analysis than the tribunals below, "'[i]t is well established in our jurisprudence that the right result reached for the wrong reason will not be disturbed on appeal.'" ***Cucos, Inc. v. McDaniel***, 938 So. 2d 238, 247 (Miss. 2006) (quoting ***Accredited Sur. & Cas. Co., Inc. v. Bolles***, 535 So. 2d 56, 60 (Miss. 1988)). Therefore, the judgments of the Mississippi Public Service Commission and of the Chancery Court of Rankin County are affirmed.

¶43. **AFFIRMED.**

WALLER, C.J., CARLSON, P.J., DICKINSON, LAMAR, KITCHENS, CHANDLER AND PIERCE, JJ., CONCUR. GRAVES, P.J., CONCURS IN RESULT ONLY.

IN THE CHANCERY COURT OF RANKIN COUNTY, MISSISSIPPI

HAROLD GREEN	**PETITIONER/ APPELLANT**
VS.	**CAUSE NO. 57,085**
CLEARY WATER, SEWER AND FIRE DISTRICT	**RESPONDENT/ APPELLEE**

OPINION AND ORDER

(Filed Sep. 3, 2008)

THIS CAUSE came on to be heard on the Appeal filed by the Petitioner/Appellant, Harold Green, from the Mississippi Public Service Commission's Order denying Mr. Green's Complaint to Vacate Order Granting Supplemental Certificate of Public Convenience filed on August 14, 2004 and Motion to Amend Complaint filed December 6, 2004 in Docket No. 00-UA-491. Having considered the Complaint, Answer and Defenses, Motions and Orders of the Mississippi Public Service Commission, and finding that the Court has jurisdiction over the parties and subject matter therein, the Court finds the following to wit:

Background and Procedural History

This matter began on August 16, 2004 wherein the Petitioner/Appellant, Harold Green ("Green") filed a Complaint to Vacate Order Granting Supplemental Certificate of Public Convenience and

Necessity before the Public Service Commission of the State of Mississippi ("MPSC").

On May 16, 1980, the Governor of Mississippi signed legislation into law which created the Cleary Heights Water & Sewer District, which gave the District all powers granted to a water and sewer district under the laws of Mississippi whether or not such powers where enumerated in the resolution of the board of supervisors creating the Cleary Heights Sewer District.[1] Further, § 19-5-173 of the Mississippi Code of 1972, as amended, provides that the District " . . . shall have the power to make regulations to secure the general health of those residing in the district; to prevent, remove and abate nuisances; to regulate or prohibit the construction of privy-vaults and cesspools, and to regulate or suppress those already constructed; and to compel and regulate the connection of all property with sewers." Any district created pursuant to §§ 19-5-151 through 157 shall be vested with all powers necessary and requisite for the accomplishment of the purpose for which such district was created and such districts are empowered to do all acts necessary, proper or convenient in the exercise of the powers granted under such sections.[2]

On or about December 18, 1980, the MPSC granted the Cleary Water, Sewer & Fire District

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[1] Miss. H. 880, 1980 General Session (May 16, 1980); Miss. Code Ann. §§ 19-5-151 to 257 (1972)

[2] Miss. Code Ann. § 19-5-175 (1972)

("District") a Certificate of Public Convenience and Necessity which authorizes the District to construct, acquire, extend or operate equipment or facilities for collecting, transmitting, treating or disposing of sewage, or otherwise operating an intrastate sewage disposal service in a specified area in and around the Community of Cleary Heights in Rankin County, Mississippi.[3] In 1986, the District resolved to change its name to Cleary Water & Sewer District and combined its operations with the Cleary Fire Protection District continuing joint operations under the name Cleary Water, Sewer and Fire District.[4] On or about September 18, 2000, the MPSC issued an "Order Granting Supplemental Certificate of Convenience and Necessity (CNN) to the District which also enlarged the District's certified area for sewer service to make said area identical to its certified area for water and fire protection. It is this Supplemental Certificate of which this litigation arises.

On September 13, 2001 the District adopted a "Decentralized Wastewater Use Ordinance" wherein said ordinance was designed to meet the demands of increased growth within the District and solving existing and future problems involving the discharge of untreated waste water into the surface and ground water of the District. The District provided Notice of

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[3] Miss. Code Ann. §§ 77-3-11(3); 77-3-13(2) (1972) [formerly Section 5(c) of Chapter 372, Laws of 1956]

[4] Minutes of the Cleary Water, Sewer and Fire District (November 3, 1986)

a hearing on the Ordinance and got approvals from the Mississippi State Department of Health and Mississippi Department of Environmental Quality.

Harold Green filed a Complaint to Vacate Order Granting Supplemental Certificate of Public Convenience and Necessity on August 16, 2004. He alleged in his complaint that the Order states, "Construction on the proposed sewer system shall be commenced within six (6) months from the effective date of this Order or this Certificate *may* be cancelled." Mr. Green alleged that more than forty-eight (48) months have passed since said Order was made effective and therefore the Order Granting Supplemental Certificate of CNN should be vacated. Mr. Green also alleged that the District perjured themselves in front of the MPSC because they did not begin construction of the proposed sewer system within six (6) months from the entry of the Order.

The District filed an Answer and Defenses on September 17, 2004. The First Defense stated that the complaint fails to show that the complainant has a direct and substantial interest in the subject matter of the complaint. The Second Defense stated that the Supplemental CNN was granted to the District in accordance with law and that the "Decentralized Wastewater Use Ordinance" was enacted in accordance with law. The District admitted that construction on the proposed sewer system did not begin within six months of the entry of the Order. The District explained that drafting and finalization of the Ordinance with three (3) agencies involved took

longer than expected. Further, Mr. Green on or about August 23, 2002 filed a lawsuit in the Chancery Court of Rankin County, Mississippi, Cause No. 52,401 wherein with little notice to the District, Green obtained a preliminary injunction preventing the District from enforcing the Ordinance, thus preventing them from constructing the sewer system. The District further Moved to Stay Proceedings until the Mississippi Court of Appeals and the Mississippi Supreme Court finally resolved the issues on appeal from the above-mentioned Chancery Court matter.

Green filed a Motion to Amend Complaint on December 16, 2004, wherein Green wanted to amend his complaint to require the District to provide Notice of their intentions to construct a decentralized sewer system. On February 23, 2005, the MPSC denied this Motion because proper notice had been given by law and requiring the District to publish what type of sewer system was being proposed would be imposing a notice requirement not mandated under law. Therefore, said Motion was denied, dismissed and otherwise held for naught.

On April 5, 2005 the MPSC entered an Order Dismissing Complaint. The MPSC found that the sole reason Green sought to vacate the Supplemental Order Granting a CNN was because construction of the sewer system did not begin within six months after entry of said Order. The MPSC found the District's answer adequately explained why the District did not offer sewer service within that time frame and that neither the District nor any of its

agents made any false representations to the Commission in this cause. Further the MPSC found that paragraph 5 of the Supplemental CNN reads as follows: "Construction on the proposed sewer system shall be commenced within six (6) months from the effective date of this Order or this Certificate *may* be cancelled." (*emphasis added*) The "may" in the Order is permissive not mandatory. Additionally, the six month provision merely gives the MPSC the right to commence revocation proceedings if it so chooses. Finally, the MPSC found that under Commission Rule 11D, "The Commission may dismiss any Complaint without a hearing if in its opinion a hearing is not necessary to the public interest or for the protection of substantial rights." The MPSC found that the District had been operating under the Supplemental CNN since September 18, 2000 and the public interest is served by its continued operation.

Green filed a Notice of Appeal from Order Disimissing Complaint on April 21, 2005, and the case sat dormant until August 23, 2006, wherein Green filed a Motion to Compel Supplementation of the Record on Appeal alleging that mandatory information that should have been provided by the District was not.[5]

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[5] The information allegedly left out deals with an agreement between the District and the Southwest Rankin Water Association which had purportedly transferred certificated sewer service area from Rankin to the District.

Chancellors John S. Grant, III and Thomas L. Zebert both recused from this matter. I, Chancery Court Judge Dan Fairly, elected to hear this matter and oral argument on the appeal was heard on February 25, 2008 at 9:00 a.m.

Issues

1. Does this Court have jurisdiction to review the decisions made by the MPSC in 2000?
2. Does Green have standing to maintain this action on appeal?
3. Did the MPSC commit reversible error in dismissing Green's Complaint?
   A. May the MPSC refuse to allow a requested amendment to a complaint?

Standard of Review

The standard of review to be employed when reviewing an administrative agency's ruling is to determine whether the decision: (1) was supported by substantial evidence; or (2) was arbitrary or capricious; or (3) was beyond the power of the lower authority to make; or (4) violated some statutory or constitutional right of the complaining party. *Landmark Structures, Inc. v. City Council,* 826 So.2d 746, 749 (Miss. 2002) "A rebuttable presumption exists in favor of the action of an administrative agency, and the burden of proof is on the party challenging an agency's action." *Hill Bros. Const. & Engineering Co.,*

Inc. v. Mississippi Transp. Com'n, 909 So.2d 58, 64 (Miss. 2005)

Analysis

This Court does have jurisdiction to review the decision made by the MPSC on April 5, 2005 but does not have jurisdiction to review the decision entered on February 23, 2005.

Any party aggrieved by any final finding, order or judgment of the MPSC, except those final findings, orders or judgments specified in Section 77-3-72, shall have the right of appeal to the chancery court of the judicial district in which the principal place of business of the utility is located. Miss. Code Ann. § 77-3-67(1) If an application for rehearing has been filed, an appeal must be filed within thirty (30) days after the application for rehearing has been refused or deemed refused. *Id.* If an application for rehearing has not been filed, an appeal must be filed within (30) days after the entry of the commission's order. *Id.*

In the case at hand, no application for rehearing was filed by Green. Therefore, Green had thirty (30) days in which to perfect an appeal to this Court, which was done. The District argues that this appeal improperly seeks to gain appellate review of a decision wherein the MPSC made on September 18, 2000, in Docket No. 2000-UA-491, to expand the area in which the District is the exclusive provider of sewer services. This Court disagrees. Green is seeking to review decisions rendered by the MPSC on

February 23, 2005 and April 5, 2005. The appeal was perfected on April 21, 2005 and the appeal from the Order Dismissing Complaint is properly before this Court. Therefore, the Order Denying Motion to Amend Complaint entered by the MPSC on February 23, 2005 is time barred and this Court lacks jurisdiction to hear such an appeal pursuant to Section 77-3-67 of the Mississippi Code, Annotated.

It is important to remember exactly what Green is appealing. The District argues that Green is seeking to overturn the MPSC's September 18, 2000 ruling wherein the MPSC granted the District a Supplemental CNN. Green has not appealed that decision.[6] Rather, Green has appealed the Order Dismissing his Complaint to Vacate the Order Granting a Supplemental CNN handed down on April 5, 2005; an Order decided by the MPSC without a hearing. Therefore, the appeal as to the Order Dismissing the Complaint to Vacate the Order Granting Supplemental CNN is properly before this Court on appeal.[7] In case the Order is wholly or partly vacated the court may also, in its discretion, remand the matter

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[6] If in fact Green had appealed the September 18, 2000 Order Granting a Supplemental CNN, then that appeal would be time-barred under Section 77-3-67 of the Mississippi Code, Annotated (1972).

[7] If this Court were to reverse and remand the MPSC ruling, that reversal may not affect the September 2000 order. If this Court were to reverse and render its own opinion, then the September 2000 order may be affected. However, this issue is moot due to the discussions below.

to the commission for such further proceedings, not inconsistent with the court's order as, in the opinion of the court, justice may require. Miss. Code. Ann. § 77-3-67(4).

Green does not have standing to maintain this action on appeal.

The District asserts that Green lacks standing to bring the present action because: (1) he was not a party to the proceeding before the MPSC in 2000; and (2) he failed to show that he has a direct and substantial interest in the subject matter. Further the District argues that Green cannot prosecute criminal charges before the MPSC.

In Green's Complaint, he alleges that "false statements were made by persons representing Cleary . . . " The MPSC has no authority to convict anyone of an alleged criminal offense. *Brotherhood of R. R. Trainmen v. Illinois Cent. R. Co.*, 138 So.2d 908, 910 (Miss. 1962). Moreover, the Court agrees with the District that Green does not possess an office or status which allows him to prosecute criminal charges in front of the MPSC.

In the MPSC's Order Dismissing Green's Complaint, the MPSC states that pursuant to Rule 11B (1) of the Commission's Practice and Procedure Rules to have standing the Complainant "must affirmatively show that the Complainant has a direct and substantial interest in the subject matter of the Complaint." Nowhere in the body of Green's

Complaint does he attempt to show that he has any justiciable interest.

It is clear to this Court that Green does in fact have an interest in the litigation at issue: he lives in the certificated area to which the District has a Supplemental CNN. Certainly a judicial decision rendered by a Court *could* affect an interest Green has in his property. Regardless if Green has an interest in the subject matter of the litigation, the real inquiry is whether Green alleges some injury, loss, damage, harm or threat of injury, loss, damage or harm to which the Court can act in granting a remedy. To answer that inquiry the Court looks to Green's Complaint. Nowhere in the Complaint does Green allege an injury, loss, damage, harm or threat of injury, loss, damage or harm. The only basis for Green asking the MPSC to vacate the Supp. CNN is that the District did not begin construction within six (6) months of the effective date of the Supp. CNN.[8] While Green may have an interest in the granting the District a Supp. CNN, he did not allege any loss, damage, injury, harm or potential threat of harm, injury, loss or damage.

Green, in his Reply Brief, argues that he was not given proper notice of the true intentions of the

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[8] The District's reasoning as to why construction did not begin within six months of being granted the Supp. CNN is wholly reasonable given the circumstances; for more detail see *supra*.

District in not only pursuing the Supp. CNN but also desiring the creation of a decentralized wastewater sewer system. The Notice published to all landowners in the District's certificated area notified landowners of the District's request to acquire a Supp. CNN. This Court agrees with Green that no mention was made in the Notice as it applies to forming a decentralized wastewater sewer system. Green argues that since the notice did not include the "Decentralized wastewater sewer system" caveat, the Notice was rendered unreasonable and therefore, one could not expect Green to be denied standing on the basis that he was not properly noticed. The Court disagrees. The issue set forth in the Notice was whether the District should be issued an expanded certificate, not what technology, processes, facilities, or equipment which the District would bring to bear in providing services. Those issues are the providence of other regulatory agencies such as the EPA, MDEQ and the MSDH. Therefore, this Court finds that proper notice was given to Green in regards to the granting of a Supp. CNN to the District.

The MPSC did not commit reversible error in dismissing Green's Complaint.

As previously mentioned, the Complaint's only basis for asking the MPSC to vacate the Supp. CNN is that the District did not begin construction within

six (6) months of the effective date of the Supp. CNN.[9] The MPSC found that the District's sworn unopposed answer adequately explained why the District did not offer sewer service within six (6) months of the date of the Supp. CNN and, that neither the District nor any of its agents made any false representations to the MPSC in this cause. Why the District failed to begin offering sewer service within the ordered time frame is due to the following:

1. Drafting and finalization of the Ordinance with three agencies involved took longer than expected;

2. The District acted in a manner to phase in the enforcement of the Ordinance so as to avoid working any perceived hardship on individual residents; and

3. On August 23, 2002, Green filed a lawsuit in Chancery Court of Rankin County, Mississippi, in Cause No. 52,401 obtaining a preliminary injunction preventing the District from enforcing the ordinance including the provisions under which the District would construct, acquire, extend or operate equipment facilities for collecting, transmitting, treating or disposing of sewage or otherwise operating an intrastate sewage disposal service.[10]

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[9] *See,* paragraph five (5) of the Order Granting Supp. CNN

[10] There was little or no notice given to the District in regard to said preliminary injunction.

Further, Paragraph 5 of the Order Granting Supp. CNN reads as follows: "Construction on the proposed sewer system shall be commenced within six (6) months from the effective date of this Order or this Certificate *may* be cancelled." (*emphasis added*) This Court agrees with the MPSC that the "may" in the Order is permissive not mandatory. The six month provision merely gives the MPSC the right to commence revocation proceedings if it so chooses. The running of the six months without construction does not automatically revoke the Supp. CNN.

Also, Miss. Code Ann. § 77-3-21 provides the sole means for revoking a CNN. A CNN can only be revoked if the MPSC finds that a utility is not "rendering reasonably adequate service." Mississippi case law has held that this is the "exclusive" method to cancel or revoke a CNN.[11] Green's Complaint did not allege that the District is not rendering reasonably adequate service, and further made no effort to prove that the District is not rendering reasonably adequate service. For these reasons, the Court finds that the MPSC did not commit reversible error in dismissing Green's Complaint.

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[11] *Delta Elective Power Ass'n v. Mississippi Power & Light Co.*, 149 So.2d 504 (Miss. 1963)

A. The MPSC is allowed to dismiss a Complaint without a hearing.

Under Commission Rule 11(D), "The Commission may dismiss any Complaint without a hearing if in its opinion a hearing is not necessary to the public interest or for the protection of substantial rights." The MPSC found, and this Court agrees, that since the District has been operating under the Supp. CNN since September 18, 2000, the public interest is served by its continued operation. It cannot be said, from the Complaint, that a hearing is necessary in this case either for the public interest or for the protection of substantial rights. The potential harm or loss to the District if the Supp. CNN were revoked would far outweigh any potential harm or loss Green would suffer if the District continued acting under the Supp. CNN.

Conclusion

In conclusion, the Court finds that it does have jurisdiction to review the decision rendered by the MPSC on April 5, 2005, but does not have jurisdiction to review the decision entered on February 23, 2005. Green does not have standing to maintain this action, not because of his justiciable interest but because he failed to allege some injury, loss, damage, harm or threat of injury, loss, damage or harm to which he would suffer. Further, the MPSC did not commit reversible error in dismissing Green's Complaint because the MPSC is allowed by law to dismiss a Complaint without a hearing because a hearing in

this matter would have not been necessary to the public interest or for the protection of substantial rights. Therefore, the decision of the MPSC is affirmed.

IT IS, THEREFORE ORDERED AND ADJUDGED that:

1) The Order denying Green's Complaint to Vacate Order Granting Supplemental Certificate of Public Convenience and denying Motion to Amend Complaint shall be and is hereby affirmed.

2) Each party shall be responsible for his own legal fees and costs associated with this appeal.

THIS THE 3rd DAY OF Sept., 2008

/s/ Dan Fairly
CHANCERY COURT JUDGE

BEFORE THE PUBLIC SERVICE COMMISSION
OF
THE STATE OF MISSISSIPPI

CLEARY WATER, SEWER & FIRE DISTRICT	**DOCKET NO. 04-AD-544**

IN RE: COMPLAINANT TO VACATE ORDER GRANTING SUPPLEMENTAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

ORDER DISMISSING COMPLAINT

THIS DAY, there came on for consideration before the Mississippi Public Service Commission (Commission) the above referenced Complaint. After a review of the entire record in this matter, the Commission finds as follows:

1. The Commission has exclusive jurisdiction over this matter and the parties. Due and proper notice of this filing was given according to applicable law.

2. That on August 16, 2004, Harold Green filed a Complaint to Vacate Order Granting Supplemental Certificate of Public Convenience and Necessity (Supp. CCN).

3. The Complainant bases his Complaint entirely on the allegation that Cleary Water, Sewer & Fire District (Cleary) did not begin construction within six months of the issuance of the Supp. CCN.

The Complainant alleges further that there were false statements made by people representing Cleary, ostensibly about when construction was to commence in order to obtain the Supp. CCN and that those people were "guilty of perjury" and should be "deemed a felon."

4. That on December 18, 1980, Cleary was granted the original Certificate of Public Convenience and Necessity for sewer service in Rankin County, Mississippi in Docket No. U-3953.

5. That on June 13, 2000, Cleary filed the Application of Cleary Water, Sewer & Fire District To Enlarge Its Certificated Area For Sewer Service To Make Said Area Identical To Its Certificated Area For Water and Fire Protection.

6. In the Application, Cleary alleged that it held a Certificate of Public Convenience and Necessity to provide water service in the requested area and was also authorized to provide fire protection in that area. Cleary petitioned the Commission to grant it a Supp. CCN so that its sewer area would be identical to the area Cleary was providing water and fire protection service. Complainant did not intervene.

7. On September 18, 2000, in Docket No. 2000-UA-491, the Commission granted Cleary the Supp. CCN as requested in the Application.

8. In response to the Complaint, on September 7, 2004, Cleary filed a "Satisfaction of Complaint" under The Commission's Practice and Procedure Rule

11B(4). In this filing, Cleary offered to provide sewer service to Complainant by running a sewer Line along the public right-of-way in front of Complainant's house. Under this Rule, Complainant has ten (10) days to accept or reject the offer of satisfaction. The Commission's records indicate that Complainant failed to file a response of any kind. If Complainant's real issue was the lack of sewer service, he could have solved that issue at that time.

9. On September 17, 2004, Cleary filed an Answer and Defenses of Cleary Water, Sewer & Fire District. The first defense raised by Cleary was that Complainant had failed to affirmatively show a "direct and substantial interest in the subject matter of the Complaint. The Commission's Practice and Procedure Rule 11B(1) requires that a Complainant "must affirmatively show that the Complainant has a direct and substantial interest in the subject matter of the Complaint that will be determined by the proceeding." Nowhere in the body of the Complaint does Complainant attempt to show that he has any justiceable interest. The Commission finds that the Complaint filed herein fails to allege or prove any "direct and substantial interest" as required by the Rule.

10. Complainant is asking the Commission to revoke the Supp. CCN issued to Cleary. Under Mississippi law, there is only one method provided for cancellation of a CCN and that is set forth in Miss. Code Ann. § 77-3-21. This code section provides that a CNN may be revoked if the Commission finds that a

utility is not "rendering reasonably adequate service." If the Commission makes such a determination, it must then advise the utility what it must do in order to render reasonably adequate service. If the utility fails to do what the Commission orders then, and only then, the certificate may be revoked. Mississippi case law has held that this is the "exclusive" method to cancel or revoke a CCN.[1] Complainant does not allege that Cleary is not rendering reasonably adequate service, and further makes no effort to prove that Cleary is not rendering reasonable adequate service.

11. The Commission finds that the Complaint should be dismissed on the grounds that the Complaint does not allege and prove that Cleary is not "rendering reasonably adequate service" pursuant to Miss Code Ann., § 77-3-21, the exclusive method to cancel a CCN.

12. As previously mentioned, the Complaint's only basis for asking the Commission to vacate the Supp. CCN is that Cleary did not begin construction within six (6) months of the effective date of the Supp. CCN. The Commission finds that Cleary's sworn unopposed answer adequately explains why Cleary did not offer sewer service within six (6) months of the date of the Supp. CCN and, that neither Cleary nor any of its agents made any false representations to the Commission in this cause.

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[1] Delta Electric Power Assn. v. Mississippi Power and Light Co. 250 Miss. 482, 149 So. 2d 504 (1963).

The paragraph (paragraph 5) of the Supp. CCN that Complainant relies on reads as follows: "Construction on the proposed sewer system shall be commenced within six (6) months from the effective date of this Order or this Certificate *may* be cancelled." (*emphasis added*) The "may" in the Order is permissive not mandatory. This is standard language put in all Commission certification orders. Commission Practice and Procedure Rule 7A(4) provides: "The Commission may in its order granting a Certificate of Public Convenience and Necessity include a provision that in the event that operations authorized under the certificate are not commenced within one hundred eighty (180) days, the certificate will be automatically voided at the end of said period." The Commission applies the mandatory provision of the Rule when the timing of implementation of utility service is crucial. When it is not, the Commission uses the permissive language in its order. Additionally, as written, the six (6) months provision merely gives the Commission the right to commence revocation proceedings if it so chooses.

The running of the six (6) months without construction does not automatically revoke the Supp. CCN. The Commission must invoke this right and institute some proceeding to accomplish revocation. The Commission has not done the above because it was and is not warranted or advisable in this instance. The granting of a CCN confers the right to be the exclusive provider of that particular utility service in that specific geographical area. The courts

have said that a CCN confers valuable property rights that are entitled to protection by the courts.[2] The Commission will not and cannot revoke such a valuable right without going through the proper § 77-3-21 process. The Commission finds that the Complaint should be dismissed on the additional grounds that the running of the six (6) months without construction does not automatically revoke the CCN but requires an affirmative action by the Commission to do so, and in this instance the Commission declines to invoke its right of revocation.

Under Commission Rule 11D, "The Commission may dismiss any Complaint without a hearing if in its opinion a hearing is not necessary to the public interest or for the protection of substantial rights". The Commission finds that since Cleary has been operating under the Supp. CCN since September 18, 2000, the public interest is served by its continued operation.

The Commission further finds that Cleary's Answer adequately explains why Cleary did not commence construction within six (6) months of the effective date of the Supp. CCN. Additionally, since the Complainant failed to allege any direct and substantial interest in the subject matter; failed to allege or prove that Cleary is not rendering reasonably adequate service; and, since the six (6)

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[2] E.g., Capital Electric Power Assoc. v. Mississippi Power & Light Company, 218 So.2d 707 (1969).

months period to commence construction is discretionary with the Commission, it cannot be said that a hearing is necessary in this case either for the public interest or for the protection of substantial rights.

IT IS THEREFORE, ORDERED, that for the reasons set forth herein, the Complaint to Vacate Order Granting Supplemental Certificate of Public Convenience and Necessity be and is hereby dismissed.

This order is effective upon issuance.

SO ORDERED, this the 5th day of April, 2005.

MISSISSIPPI PUBLIC
SERVICE COMMISSION

/s/ Bo Robinson
Bo Robinson,
Chairman

/s/ Nielsen Cochran
Nielsen Cochran,
Vice-Chairman

/s/ Michael Callahan
Michael Callahan,
Commissioner

[SEAL]

ATTEST: A True Copy

/s/ Brian U. Ray
Executive Secretary

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSISSIPPI

2004-AD-544

CLEARY WATER, SEWER & FIRE DISTRICT

IN RE: APPLICATION OF CLEAR WATER, SEWER AND FIRE DISTRICT, TO ENLARGE ITS CERTIFICATED AREA FOR SEWER SERVICE TO MAKE SAID AREA IDENTICAL TO ITS CERTIFICATED AREA FOR WATER AND FIRE PROTECTION

ORDER DENYING MOTION (2-23-05)

THIS CAUSE came on this day to be heard on "Motion to Amend Complaint of Harold Green" filed December 6, 2004.

The Public Service Commission, being fully apprised in the premises and having considered the documents and records before it, does hereby deny the aforesaid motion.

Miss. Code Ann., § 77-3-45 sets forth the notice requirements in certification cases Applicant must give notice to persons interested by mailing notice to each public utility which may be affected and by publication in a newspaper of general circulation published in Jackson, Mississippi and in a newspaper

of general circulation in the county where the facility or area is located.

In the Order Granting Supplemental Certificate of Public Convenience and Necessity issued September 18, 2000, the Commission found that due and proper notice had been given as required by law. Movant in this cause is not contending that notice was not given as required by statute and regulation, but that the notice did not advise "of the intentions of Cleary to attempt to create a decentralized sewer system." In other words, Movant contends that Cleary was required to give notice of the type or kind of sewer treatment facility it was going to use. Movant seeks to impose a notice requirement on Respondent that the law does not require and for that reason the Motion should be denied.

IT IS THEREFORE ORDERED, that the Motion to Amend Complaint of Harold Green be and is hereby denied.

IT IS FURTHER ORDERED, that this Order shall be effective upon issuance. Chairman Bo Robinson voted Aye, Vice-Chairman Nielsen Cochran voted Aye; and Commissioner Michael Callahan voted Aye.

SO ORDERED on this the 23rd day of February, 2005.

MISSISSIPPI PUBLIC SERVICE COMMISSION

/s/ Bo Robinson
Bo Robinson,
Chairman

/s/ Nielsen Cochran
Nielsen Cochran,
Vice-Chairman

/s/ Michael Callahan
Michael Callahan,
Commissioner

[SEAL]

ATTEST: A True Copy

/s/ Brian U. Ray
Executive Secretary

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(2)

No. 09-722

In The

Supreme Court of the United States

HAROLD GREEN,

Petitioner,

v.

CLEARY WATER, SEWER AND FIRE DISTRICT,

Respondent.

On Petition For Writ Of Certiorari To The Mississippi Supreme Court

PETITION FOR REHEARING

HAROLD GREEN
Pro Se
558 Mullican Road
Florence, MS 39073
601-845-6378

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PETITION FOR REHEARING

We respectfully ask this court for a rehearing because of the constitutional issues involved that this court only, has Authority.

REASONS FOR GRANTING REHEARING

I. A constituted issue concerning the Mississippi Courts and Public Service Commission denying the Petitioner equal protection of the law

We have petitioned eight years for a hearing on the method in which Cleary obtained a Supplemental CCN Certificate from the Public Service Commission, without success.

The Courts of Mississippi have refused to accept our documented evidence as proof of wrong doing by Cleary and the P.S.C. (Exhibit-3)

As documented evidence of the statement made above we present the following. In the Supreme Court mandate (app. 17, item 24) in part, quote "The allegations against Cleary are of no event." (Exhibit-5)

We have not received equal protection of the laws. (14th Amendment) (Exhibit-2)

II. A constituted issue concerning the "Decentralized Wastewater Use Ordinance "of" Cleary Water, Sewer and Fire District. The Taking Clause

Cleary's "Decentralized Wastewater Use Ordinance" contains the "Taking Clause" for new installations. (5th Amendment) (Exhibit-1) Thereby taking our Grandchildren's property. (Exhibit-6)

The Constitution of the State of Mississippi also has a similar "Taking Clause". (Article 3 Section 17) (Exhibit-3)

(SC) indicates the Supreme Court of Mississippi

(HG) indicates Harold Green

From the Supreme Court of Mississippi of the mandate issued app. 17, item 24, there are several points we would like to clarify. (Exhibit-5)

(SC) "Green's central complaint is that Cleary pulled a "bait and switch" on him and the other petitioners, by claiming it would construct a sewer system for the area, while having no intent to do so."

(HG) The complaint was and is that false statements were made by CWSFD to obtain the Supplemental CCN Certificate they hold. The application is as follows, "Application of Cleary Water, Sewer and Fire District, to enlarge its certificated area for sewer service to make said area identical to its certificated area for water and fire protection." (Exhibit-7) This area to be identical with has a centralized sewage

disposal plant constructed in 1980 for the private community of Cleary Heights. Item 8 of application states "The Cleary Water, Sewer and Fire District is agreeable to operating a water, sewer and fire utility system to serve the residents of the entire area, upon approval and authorization from the Commission." Item 5 of application states "The financial reports of Cleary are on file with the Commission. The expansion of the sewer service area will not jeopardize the financial well being of Cleary" (Exhibit-16). The Statute of Definition is (49-17-5) 1C "Sewerage System" means "pipelines or conduits, pumping stations and force mains, and other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal." (Exhibit-8)

(SC) "Cleary's manager said in a newspaper article as early as 2002, that the decentralized sewer system" "was not something we did overnight. This was two or three years in the making." "Cleary's manager also said that a centralized system would cost approximately $17,000 per home." (Exhibit-10)

(HG) CWSFD knew one year (1999) before applying for a certificate they could not and were not going to construct a sewage treatment plant so as to furnish sewer service to the residents of this new area. (Exhibit-11)

(HG) On September 18, 2000, the CWSFD received this order from the Public Service Commission "order granting Supplemental Certificate of public

convenience and necessity." This order states no less than five times "authorizing it to construct, operate and maintain a sewer system" and four times to "furnish sewer service." (Exhibit-9)

(SC) "The allegations against Cleary are of no event, for even if the chancellor had granted them credence, they do not alter the fact that the appeal was untimely filed."

(HG) The word "allegation" is "a statement offered without proof." The word "event" is "especially one of some significance." The word "credence" is "acceptance as true or valid."

When we make a statement we try to place proof where it can be found, sometimes it's only a quote, at others the whole document. Case in point, the above items. The word "event" has a great deal of significance to us. The word "credence" is a person's integrity which also means a great deal to us. If we interpret the Justice correctly, he is stating we are making up stories that have no meaning and are lies.

(HG) "They do not alter the fact that the appeal was untimely filed" about four years late. In Cleary's application (Exhibit-7), we the "water only customers," were not listed as "Interested Persons" (Exhibit-4) as required by (Rule 2 K) and (appendix "A" – Schedule 2, item 13) (Exhibit-12-13). Therefore, denied our "civil rights" guaranteed in the (14th Amendment) (Exhibit-2) as equal protection of the Laws. Cleary made a decision that we were not eligible to be listed as Interested Persons thereby

preventing us from being a participant in the certificate proceedings, when in fact we met the requirements because the entire certificate process involves each one of us "Personally" and "Property" our "Finances" and the "Taking Clause" of the 5th Amendment.

The problem in this case began with Cleary's application that we have written briefly elsewhere in this brief. We would like to consider the impact on our lives by Cleary's decision not to list its Water Only Customers as Interested Persons. The Laws governing Certificate proceedings are known as "Public Utilities Rules of Practice and Procedure" dated February 15, 1994. The administrator being the Mississippi Public Service Commission.

The Rules most important to our case are (Rules 2, 3, 7, 11 and appendix "A" Schedule 2) because they are used to determine who is eligible to be called, "Interested Persons." Rules 2 K-3 quote "In proceedings filed by non-utilities or proceedings initiated by the Commission, the Commission Staff or the MPUS, any person having a substantial interest in the subject matter of the proceeding or whose rights and liabilities may be materially affected thereby."

We meet those requirements because Cleary states in their application they will construct, operate and maintain a sewerage treatment and disposal plant so as to furnish sewer service to the water only customers. Shortly before petitioning for a certificate, Cleary passed a "Sanitary Sewer Use Ordinance"

requiring property owners to connect to this proposed new sewer system as soon as available. This would cost at minimum $5,000 to each property owner. (Exhibit-14)

Appendix "A" Schedule 2, item 13, requirements are quote "an exhibit listing the names and addresses of all interested persons as defined in Rule 2K of the Commission's Rules of Practice and Procedure together with a certificate that the filing utility has served a notice of the filing upon each." We have also met these requirements to be listed as interested persons. However, Cleary decided we were not eligible and did not list the Water Only Customers as such so Cleary did not inform us of their application for a Certificate as required by (item 13) and (Rule 2 K3). By not being listed as interested persons, we were denied our civil rights to participate in the Certificate proceedings. Furthermore, Justice Randolph stated on app. 15, item 21 quote "Further, as Green was not a party to the grant of the supplemental CCN, he may not appeal from that decision." He also stated on app. 17 item 24 quote "the appeal was untimely filed." Cleary, the P.S.C. and the Chancery Court all agree we have no standing. Cleary did file a timely notice in the Jackson Clarion-Ledger newspaper on June 21, 2000. We have a copy of this but not one from Rankin County News. We did not see either of these notices or any others. Some may have but we have not spoken to any.

We were denied access to this proceeding first by Cleary not listing us as Interested Persons and next

by the P.S.C. for not enforcing the Public Utilities Rules of Practice and Procedure, it certainly would have been in the public interest. The first time we knew anything was amiss, was the letter from Cleary dated Sept. 14, 2001. (Exhibit-15).

What a surprise and after reading, shock, to learn Cleary applied for and received a Certificate to construct, operate and maintain a sewerage treatment plant so as to furnish sewer service to us. The shock quickly turned to anger as we read that a Decentralized Wastewater Use Ordinance had been passed and put into effect without any of the recipients being aware. This is unbelievable but true.

After 10 years we still find it hard to believe anyone could or would destroy what has taken 234 years and millions of lives to build.

The previous briefs and this one are Pro Se. Not because of some misguided thought of a high intellect, which was dispensed with in early childhood, but because of the financial burden. We did seek legal help from Mississippi Center for Legal Services Corporation but were informed their office was unable to assist us. Though uneducated, especially in law, we do believe in our Constitutional form of government and strive for its continuation and to honor those who have given their all for that cause.

CONCLUSION

In the Supreme Court of Mississippi, mandate app. 17 stating "The allegations against Cleary are of no event" and that we "made statements against Cleary without proof" is arbitrary. That we were not listed as Interested Persons, as required by law, is an indisputable fact. (Exhibit-12 – Rule 2 K3 – Our Q2) (Exhibit-13 – Appendix "A" Schedule 2, Our – Q14). It is incomprehensible that anyone would make such a statement when in fact the entire certificate process from application to the Decentralized Wastewater Use Ordinance affects the Water Only Customers of Cleary. It affects our right to be present at the Certificate hearing. We are liable for all things concerning our property both materially and monetarily. Some of our rights are, (1) first we were not listed as Interested Persons. (2) We were denied the right to participate in the certificate proceedings. (3) By not being a participant in the Supplemental CCN, we cannot appeal from that decision, (app. 15 item 21). (4) Because of the above items, the 30 day time limit to file expired.

Cleary's stated goal, verified by the Decentralized Wastewater Use Ordinance is to take ownership of our individual onsite wastewater disposal system. They have made a modification to the existing units temporarily. In new installations, Cleary installs the unit, the new owner pays at least $5,000, Cleary takes ownership then charges the owner a monthly fee to use. (Exhibit-6 – Our – E3-6) (Exhibit-1, Taking Clause.) This is a mad tyrannical rush to take over

our property and ultimately every "Individual Onsite Wastewater Disposal System" in Mississippi. Destroying the most important truth, the Constitution, that guarantees Life, Liberty and the pursuit of happiness knowing their house or property cannot be taken except for Public use and then not without just compensation.

Not only does Cleary's Decentralized Wastewater Use Ordinance take our property, they charge a fee to use it. Unbelieveable. For the above and other reasons that can be brought to light from a Writ of Certiorari, we humbly ask this Court to grant a rehearing, for you are the last hope we have of any future freedom.

Respectfully submitted,

HAROLD GREEN
Pro Se
558 Mullican Road
Florence, MS 39073
601-845-6378

CERTIFICATION

The foregoing petition for rehearing is presented in good faith and not for purpose of delay. This petition for rehearing is restricted to the grounds set out in Rule 44.2.

HAROLD L. GREEN
Pro Se

EXHIBIT 1

U.S. Constitution

Bill of Rights

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

EXHIBIT 2

U.S. Constitution

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, *being twenty-one years of age*, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

EXHIBIT 3

CONSTITUTION OF THE STATE OF MISSISSIPPI

(Adopted Nov. 1, A.D., 1890)

PREAMBLE

We, the people of Mississippi in convention assembled, grateful to Almighty God, and invoking his blessing on our work, do ordain and establish this Constitution.

ARTICLE 3
BILL OF RIGHTS

[NOTE: There is no sections 1-4 of article 3]

Sec. 5. All political power invested in, and derived from, the people; all government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Sec. 6. The people of this state have the inherent, sole, and exclusive right to regulate the internal government and police thereof, and to alter and abolish their constitution and form of government whenever they deem it necessary to their safety and happiness; Provided, such change be not repugnant to the constitution of the United States.

Sec. 7. The right to withdraw from the Federal Union on account of any real or supposed grievance, shall never be assumed by this state, nor shall any law be passed in derogation of the paramount

allegiance of the citizens of this state to the government of the United States.

Sec. 8. All persons resident in this state, citizens of the United States, are hereby declared citizens of the state of Mississippi.

Sec. 9. The military shall be in strict subordination to the civil power.

Sec. 10. Treason against the state shall consist only in levying war against the same or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Sec. 11. The right of the people peaceably to assemble and petition the government on any subject shall never be impaired.

Sec. 12. The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons.

Sec. 13. The freedom of speech and of the press shall be held sacred; and in all prosecutions for libel the truth may be given in evidence, and the jury shall determine the law and the facts under the direction of the court; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted.

Sec. 14. No person shall be deprived of life, liberty, or property except by due process of law.

Sec. 15. There shall be neither slavery nor involuntary servitude in this state, otherwise than as punishment for crime, whereof the party shall have been duly convicted.

Sec. 16. Ex post facto laws, or laws impairing the obligation of contracts, shall not be passed.

Sec. 17. Private property shall not be taken or damaged for public use, except on due compensation being first made to the owner or owners thereof, in a manner to be prescribed by law; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be a judicial question, and, as such, determined without regard to legislative assertion that the use is public.

Sec. 18. No religious test as a qualification for office shall be required; and no preference shall be given by law to any religious sect or mode of worship; but the free enjoyment of all religious sentiments and the different modes of worship shall be held sacred. The rights hereby secured shall not be construed to justify acts of licentiousness injurious to morals or dangerous to the peace and safety of the state, or to exclude the Holy Bible from use in any public school of this state.

Sec. 19. Human life shall not be imperiled by the practice of dueling; and any citizen of this state who

shall hereafter fight a duel, or assist in the same as second, or send, accept, or knowingly carry a challenge therefor, whether such an act be done in the state, or out of it, or who shall go out of the state to fight a duel, or to assist in the same as second, or to send, accept, or carry a challenge, shall be disqualified from holding any office under this Constitution, and shall be disfranchised.

Sec. 20. No person shall be elected or appointed to office in this state for life or during good behavior, but the term of all officers shall be for some specified period.

Sec. 21. The privilege of the writ of habeas corpus shall not be suspended, unless when in the case of rebellion or invasion, the public safety may require it, nor ever without the authority of the legislature.

Sec. 22. No person's life or liberty shall be twice placed in jeopardy for the same offense; but there must be an actual acquittal or conviction on the merits to bar another prosecution.

Sec. 23. The people shall be secure in their persons, houses, and possessions from unreasonable seizure or search; and no warrant shall be issued without probable cause, supported by oath or affirmation, specially designating the place to be searched and the person or thing to be seized.

Sec. 24. All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law,

and right and justice shall be administered without sale, denial, or delay.

Sec. 25. No person shall be debarred from prosecuting or defending any civil cause for or against him or herself, before any tribunal in the state, by him or herself, or counsel, or both.

Sec. 26. In all criminal prosecutions the accused shall have a right to be heard by himself or counsel, or both, to demand the nature and cause of the accusation, to be confronted by the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, in all prosecutions by indictment or information, a speedy and public trial by an impartial jury of the county where the offense was committed; and he shall not be compelled to give evidence against himself; but in prosecutions for rape, adultery, fornication, sodomy or the crime against nature the court may, in its discretion, exclude from the courtroom all persons except such as are necessary in the conduct of the trial.

Sec. 27. No person shall for any indictable offense, be proceeding against criminally by information, except in cases arising in the land or naval forces, or the military when in actual service, or by leave of the court for misdemeanor in office; but the legislature, in cases not punishable by death or by imprisonment in the penitentiary, may dispense with the inquest of the grand jury, and may authorize prosecutions before justices of the peace, or such other inferior court or

courts as may be established, and the proceedings in such cases shall be regulated by law.

Sec. 28. Cruel or unusual punishment shall not be inflicted, nor excessive fines imposed.

Sec. 29. Excessive bail shall not be required, and all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great.

Sec. 30. There shall be no imprisonment for debt.

Sec. 31. The right of trial by jury shall remain inviolate, but the legislature may, by enactment, provide that in all civil suits tried in the circuit and chancery court, nine or more jurors may agree on the verdict and return it as the verdict of the jury.

Sec. 32. The enumeration of rights in this constitution shall not be construed to deny and impair others retained by, and inherent in, the people.

EXHIBIT 4

Certificate Of Interested Parties

City of Richland, Mississippi
371 Scarbrough Street
Richland, Mississippi 39218

Attention: Mayor

City of Florence, Mississippi
201 North Church Street
Florence, Mississippi 39073

Attention: Mayor

Southwest Rankin Water Association, Inc.
201 South County Line Road
Florence, Mississippi 39073

Attention: President

EXHIBIT 5

* * *

no one expressed opposition. ***Green I***, 910 So. 2d at 1025.

¶ 24. Green's central complaint is that Cleary pulled a "bait and switch" on him and the other petitioners, by claiming it would construct a sewer system for the area, while having no intent to do so. Cleary's manager said in a newspaper article as early as 2002 that the decentralized sewer system was "not something we did overnight. This was two or three years in the making." Cleary's manager also said that a centralized system would cost approximately $17,000 per home. The allegations against Cleary are of no event, for, even if the chancellor had granted them credence, they do not alter the fact that the appeal was untimely filed.

B. The Denial of Leave to end and the Dismissal of the Complaint in 2005.

¶ 25. Following the same analysis, the chancellor found that the chancery court was without jurisdiction to hear an appeal of the denial of Green's motion to amend. The thirty-day appeal deadline applies to any "final finding, order or judgment of the commission. . . ." Miss. Code Ann. § 77-3-67(1) (Rev. 2001). The Commission issued its "Order Denying Motion" on February 23, 2005. Green did not appeal until April 21, 2005. Thus, if the statute applies to the February order, the chancellor was correct. However,

in ***Mississippi Power Company v. Mississippi Public Service Commission***, 240 Miss. 621, 128

EXHIBIT 6

* * *

Ordinance.

SECTION 4. Any existing system that will require a complete upgrade or change of the system will must meet all provisions of Article III "New Installations".

SECTION 5. Any system that can not be repaired or replaced, to fully approvable standards, shall be improved with recommendations from the Department of Health so as to treat the wastewater as best as possible, reduce the volume of treated effluent as much as possible, and maintain the treated effluent on the property of the generator to the greatest extent possible.

SECTION 6. All existing individual onsite wastewater disposal systems at the time of property transfer will be required to be certified and ownership of the system will be transferred to the District with the property owner becoming a customer of the Decentralized Wastewater System and the District will perpetually maintain the system.

ARTICLE III
NEW INSTALLATIONS

SECTION 1. *All new individual onsite installation shall conform to all requirements of*

the current Decentralized Wastewater Ordinances and the Regulation Governing Individual Onsite Wastewater Disposal.

SECTION 2. *All new installations of IOWDS shall require the property owner* or his/her representative to provide the District two platted surveys of the site which will include all above and below ground buildings, electrical lines (buried), water lines, gas lines and aperture. The Platt will be certified by a engineer or land surveyor licensed to do business in Mississippi. The Platt will include dimensions of building(s) and approximate location of all below ground installations, A copy of the Platt will be attached to the District's soil analysis form that will be presented to the State Board of Health for the inspection of the site. The form will be filled out by the owner or his/her authorized representative to include all appropriate information. A copy of the Platt must be attached to the District's soil/site evaluation form. This form, along with the Platt, will be presented to the Department of Health for the inspection of the site. The Department of Health will inspect the site and give to the owner the completed form which the owner will return to the District. *The District's engineer and/or manager will determine the appropriate IOWDS to be*

installed at the site. Upon Department of Health inspection and final approval of the installed system the District will assume ownership and perpetual maintenance of the system, with the owner becoming a customer of the District. The property owner will provide a right-of-way and easement to the District that will cover all egress and aggress for properly identified employees to maintain the system. To allow for proper maintenance of the system, nothing shall be built over or laid over any electrical or water conveyances to the unit or the system itself so as to obstruct maintenance of the system.

SECTION 3. Onsite systems incorporating a septic tank as part of the installation shall be equipped with risers at or near the surface at the inlet and outlet of the tank to facilitate inspection and pumping without removal of the top of the tank. In addition all septic tanks will incorporate an in-tank effluent filter. Outlet man way and riser shall be sized large enough to facilitate the removal of the filter for routine inspection and/or maintenance.

SECTION 4. All septic tanks, pump chambers, chlorine contact chambers and distribution boxes shall be constructed and properly sealed so as to prevent infiltration and exfiltration of liquid.

ARTICLE IV
COST AND FEES

SECTION 1. *All cost incurred by the District including the final inspection of the IOWDS will be borne by the owner. After final inspection and acceptance by the District, the District will assume all cost of maintenance of the IOWDS. Final payment for the system purchased by the District will be due and payable upon final inspection by the Department of Health.*

SECTION 2. If the District assumes ownership of a previously installed IOWDS, all cost incurred for its inspection, will be borne by the District. If the District does not assume ownership of the IOWDS then the owner will bear the cost of the inspection. The owner will bear/pay all cost incurred to bring a previously installed IOWDS up to the applicable standard necessary for the District to assume ownership.

SECTION 3. *All monthly fees and charges will be set by the District's Board of Commissioners and will be reviewed annually at the November public meeting. Monthly fees will based upon water consumption through the household's potable water meter.*

* * *

EXHIBIT 7

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSISSIPPI

NO. '00-UA-491 **IN RE:**

APPLICATION OF CLEARY WATER, SEWER AND FIRE DISTRICT, TO ENLARGE ITS CERTIFICATED AREA FOR SEWER SERVICE TO MAKE SAID AREA IDENTICAL TO ITS CERTIFICATED AREA FOR WATER AND FIRE PROTECTION

(Filed Jun. 13, 2000)

Cleary Water, Sewer and Fire District, files this Application as follows:

1. Cleary Water, Sewer and Fire District ("Cleary") is an incorporated district created pursuant to Sections 19-5-151 through 19-5-207 of the Mississippi Code of 1972, as amended.

2. Cleary holds a Certificate of Convenience and Necessity in Docket Number WD 100-0436-00. The area certificated for Cleary to provide water service and fire protection is not identical to the area certified for Cleary to provide sewer service.

3. *Cleary now desires that the area certificated for it to provide sewer service be* ***identical*** *to the area certified for water service and fire protection*. Attached here to as Exhibit "A" is a true and correct copy of the

legal description for the Water Service Area. There is pending with the Commission a request that the Water, Fire and Sewer Service areas be extended to include the property described below which is being transferred, subject to Commission approval, to Cleary from the Southwest Rankin Water Association, Inc.:

> All of the Northwest Quarter of Section 21, Township 4 North, Range 1 East, Rankin County, Mississippi, all of the Northeast Quarter of Section 21, Township 4 North, Range 1 East, Rankin County, Mississippi, all of the Southeast Quarter of Section 21, Township 4 North, Range 1 East, Rankin County, Mississippi and all of the East Half of the East Half of the Southwest Quarter of Section 21, Township 4 North, Range 1 East, Rankin County, Mississippi and All of the portion of the North Half of the Northeast Quarter of Section 28, Township 4 North, Range 1 East, Rankin County, Mississippi, lying North of the Byram-Florence Road as said road exist this date, containing 528 acres more or less and all being located in Section 21 and Section 28, Township 4 North, Range 1 East, Rankin County, Mississippi.

4. Petitioner would further show that the following persons are the duly appointed officials of the Cleary Water, Sewer and Fire District:

Commissioners Harold Winborne, Buddy Eady, Bob Whatley, Bill Harvey and Chairman Ken Johnson.

5. The financial reports of Cleary are on file with the Commission. The expansion of the sewer service area will not jeopardize the financial well being of Cleary.

6. A copy of the Charter or articles for each of these entities are on file with the Commission. No party to this transaction is a foreign corporation. No acquisition adjustment or rate base or expenses is sought. These parties do not own any other Mississippi Utility operations. *Attached hereto as Exhibit "B" is a list of the names and addresses of all* ***interested persons*** *as defined by* ***Rule 2K*** *of the Commission's Rules.*

7. The testimony to be relied upon at the hearing is attached hereto as Exhibit "C."

8. The Cleary Water, Sewer and Fire District is agreeable to operating a water, sewer and fire utility system to serve the residents of the entire area, upon approval and authorization from the Commission.

9. *The operation by Cleary of a* ***sewer system*** *as soon as* ***economically feasible*** *is in the public interest, and the expansion should be authorized and approved by the Commission.*

10. The Petitioners further pray that the Commission waive the formalities of other documents not attached hereto as same are either already on file or not relevant to this proceeding.

WHEREFORE, Petitioners pray that the area certificated for water, sewer and fire protection to

Cleary Water, Sewer and Fire District encompass and include the area described in Exhibit "A" and in paragraph no. 3 above which is being transferred from Southwest Rankin's Certificate of Public Convenience and Necessity granted in Docket Number UA-100-0531-00 (Utility ID No. U-2106) more particularly described in said Certificate.

WITNESS OUR SIGNATURES, this 13 day of June, 2000.

RESPECTFULLY SUBMITTED,

Cleary Water, Sewer and Fire District

By: /s/ Ken Johnson
Ken Johnson, Chairman

WITNESSED:

/s/ Ken Munn

Prepared by:

/s/ James A. Bobo
James A. Bobo
Mississippi Bar No. 3604
James A. Bobo, PA
Post Office Box 54193
Pearl, Mississippi 39288
(601) 933-1997

Attorney For Cleary Water,
Sewer and Fire District

EXHIBIT 8

Source:

Mississippi Code/TITLE 49 CONVERSATION AND ECOLOGY/CHAPTER 17 POLLUTION OF WATERS, STREAMS, AND AIR/IN GENERAL/§ 49-17-5. Definitions.

§ 49-17-5. Definitions.

For the purposes of Sections 4917-1 through 49-17-41 the following words and phrases shall have the meanings ascribed to them in this section:

(1) Water.

(a) "Pollution" means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance or leak into any waters of the state unless in compliance with a valid permit issued therefor by the Permit Board.

(b) "Wastes" means sewage, industrial wastes, oil field wastes, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the state.

(c) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and other structures, devices, appurtenances and facilities used for

collecting or conducting wastes to an ultimate point for treatment or disposal.

(d) "Treatment works" means any plant or other works, used for the purpose of treating, stabilizing or holding wastes.

(e) "Disposal system" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells and other systems.

(f) "Waters of the state" means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, situated wholly or partly within or bordering upon the state, and such coastal waters as are within the jurisdiction of the state, except lakes, ponds or other surface waters which are wholly landlocked and privately owned, and which are not regulated under the Federal Clean Water Act (33 U.S.C. 1251 et seq).

(g) "Underground water" means an underground source of drinking water as defined within the regulations of the Federal Safe Drinking Water Act.

(2) Air.

(a) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke or vapor, or any combination thereof, produced by processes other than natural.

(b) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristic, and of a duration which are materially injurious or can be reasonably expected to become materially injurious to human, plant or animal life or to property, or which unreasonably interfere with enjoyment of life or use of property throughout the state or throughout such area of the state as shall be affected thereby.

(c) "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.

(d) "Air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at, or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes.

(e) "Air-cleaning device" means any method, process or equipment, the primary function of which is to remove, reduce or render less noxious air contaminants discharged into the atmosphere.

(f) "Area of the state" means any city or county or portion thereof, or other substantial geographical area of the state as may be designated by the Mississippi Commission on Environmental Quality.

(g) "Federal Clean Air Act" means the Federal Clean Air Act, 42 U.S.C. 7401 et seq., as amended.

(3) General.

(a) "Commission" means the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality.

(b) "Person" means the state or other agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation, or the United States or any officer or employee thereof.

(c) "Pollution Emergency Fund" means the fund established under Section 49-17-68.

(d) "General permit" means a permit for categories of sources that involve similar wastes and have similar monitoring requirements and restrictions.

EXHIBIT 9

BEFORE THE PUBLIC SERVICE COMMISSION
OF
THE STATE OF MISSISSIPPI

2000-UA-491

CLEARY WATER, SEWER & FIRE DISTRICT

SD-100-0436-01

IN RE: APPLICATION OF CLEARY WATER, SEWER AND FIRE DISTRICT, TO ENLARGE ITS CERTIFICATED AREA FOR SEWER SERVICE TO MAKE SAID AREA IDENTICAL TO ITS CERTIFICATED AREA FOR WATER AND FIRE PROTECTION. [9-18-2000]

ORDER GRANTING SUPPLEMENTAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

This day this cause came on to be heard upon the duly verified Petition of Cleary Water, Sewer & Fire District (the "District"), a utility district created pursuant to Sections 19-5-151 through 19-5-207 of the Mississippi Code of 1972, as amended, *requesting a Supplemental Certificate of Public Convenience and Necessity authorizing it to* ***construct, operate and maintain a sewer system*** *in specified areas adjacent to its present certificated area in Rankin County, Mississippi, hereinafter particularly described.*

The Public Service Commission, being fully apprised in the premises and having considered the documents and record before it, and upon recommendation of the Public Utilities Staff, finds as follows:

(1) Cleary is a utility district created pursuant to Sections 19-5-151 through 19-5-207 of the Mississippi Code of 1972, as amended, and is engaged in providing *sewer service* in a certain area in Rankin County, Mississippi, and the Public Service Commission has full jurisdiction of the applicant and the subject matter.

(2) Due and proper notice of the pendency of this cause has been given in the mariner and for the time required by law. No protest or objection has been filed in this proceeding.

(3) Cleary was granted an initial Certificate of Public Convenience and Necessity *to construct, operate and maintain a sewer system within the area* designated in said certificate in Docket No. U-3953. Cleary has applied for a Supplemental Certificate of Public Convenience and Necessity to *furnish sewer service* to the hereinafter described area.

(4) The public convenience and necessity justifies and requires the grant of this Supplemental Certificate of Public Convenience and Necessity for the additional area.

(5) The hereinafter described area is not within the corporate boundaries of a municipality.

(6) *Cleary is ready, willing and able to construct, operate and maintain a sewer system so as to render sewer service to the public for compensation in the additional area proposed to be served.*

IT IS, THEREFORE, ORDERED that:

(1) *The request of Cleary Water, Sewer & Fire District for a Supplemental Certificate of Public Convenience and Necessity to serve an additional area, is hereby granted and approved so as to authorize and permit it to construct, operate and maintain a sewer system in the additional area hereinafter described.*

(2) The public convenience and necessity requires the grant of this Supplemental Certificate.

(3) *Cleary is hereby granted a Supplemental Certificate of Public Convenience and Necessity pursuant to Section 77-3-1, et seq., of the Miss. Code of 1972, as amended, to construct, operate and maintain a sewer system, so as to furnish sewer service to the public for compensation in a specified area in Rankin County, Mississippi, the description of which is attached hereto and incorporated herein by reference as Exhibit "A".*

(4) Cleary will serve, without exception, all persons requesting service in the herein described certificated area at the currently approved rates.

(5) *Construction on the proposed sewer system shall be commenced within six (6) months from the effective date of this Order or this Certificate* ***may*** *be canceled.*

(6) Nothing in this Order shall affect the right of any other sewer Utility to continue rendering service to any customer that it was legally serving upon the effective date of this Order.

(7) Notwithstanding anything to the contrary contained herein, developers of new subdivisions in the supplemental certificated area, who have received notification prior to the date of this order from the State Health Department that the subdivision/lots proposed by the developer are generally suitable for onsite wastewater disposal systems, shall not be required to connect to the Cleary Water, Sewer and Fire District sewer system.

(8) This Order shall be in effect from and after the date of issuance.

Chairman Nielsen Cochran, Vice-Chairman Michael Callahan and Commissioner Bo Robinson voted Aye.

ORDERED this the 18th day of September, 2000.

MISSISSIPPI PUBLIC
SERVICE COMMISSION

[SEAL]

/s/ Nielsen Cochran
Nielsen Cochran, Chairman

/s/ Michael Callahan
Michael Callahan,
Vice-Chairman

/s/ Bo Robinson
Bo Robinson, Commissioner

ATTEST: A True Copy

/s/ Brian U. Ray
Brian U. Ray
Executive Secretary

EXHIBIT 10

Cleary residents fight wastewater ordinance

By Tom Hill

FLORENCE – Some of Cleary Water, Sewer and Fire District's Water customers have filed a lawsuit against the CWSFD in an effort to stop the District from fully enforcing its new wastewater ordinance on Sept. 14, as scheduled.

The suit was filed in Rankin County Chancery Court on behalf of the complainants by Florence attorney David Ringer. In the suit, the group contends the CWSFD is seeking to exceed its authority by [illegible] its customers on septic tanks or sanitation systems to have annual inspections to show their units are functioning properly and by making those customers whose units are not functioning properly install new ones, then sign ownership of them over to CWSFD for it to maintain for a charge of $15 a month.

The plaintiffs are asking the Court to prohibit the CWSFD from taking any action until such time that it makes a centralized sewer collection available to all its water customers.

The lawsuit stems from an ordinance that the CWSFD board adopted in June, 2001. That ordinance created a decentralized wastewater system and set the time frame for implementing it.

CWSFD manager Kenn Munn said the District has around 700 water customers. He said the residences of about 450 of those customers are connected by sewerage lines to the District's centralized wastewater system which is similar to the systems in Florence or Richland. He said the other 250 water customers who have onsite wastewater treatment systems (septic tanks or sanitation systems) at their residences were made part of the decentralized wastewater system.

According to Munn, on June 21, 2001, the 250 water customers whose homes are served by onsite wastewater treatment were grandfathered into the decentralized system. He said those people were given until Sept. 14, 2002 to have their onsite units inspected. He said if the units passed, the home owners can continue to maintain their own units. He said they would only have to get annual inspections done to show that their systems are functioning properly. He said over half of the people affected by the new ordinance have complied with the inspection requirement.

Munn said if a unit fail inspection, the home owner must get a new unit put in that meets the CWSFD's standards. He said those home owners would be made sewer customers of the CWSFD. He said the CWSFD then would take ownership of the onsite wastewater treatment unit and maintain it. He said the customers would be charged $15 a month for the service.

All onsite wastewater treatment units that have been installed since the ordinance was adopted in June, 2001 have had to meet CWSFD standards and the owners were made sewer customers.

There are about 120 individuals listed as plaintiffs in the lawsuit against CWSFD. Those people represent about 80 different homesites. Munn said he saw the list of names and about half of them had complied with the new ordinance. He said every person who has been to his office to discuss the matter left satisfied that the new system was a positive one.

Munn said the CWSFD board was addressing two problems when it adopted the ordinance creating the decentralized wastewater system. He said there are some onsite wastewater treatment units in the Cleary District that are not working properly. He said as a result, there are places where raw sewage runs out on the ground. He said the new ordinance would eliminate that problem.

Munn said there also are a number of new subdivisions going up in the area served by the CWSFD. He said the new ordinance water treatment units are being put in.

Munn said it is not financially feasible for the CWSFD to run sewerage lines to every home in the District so that everyone would be connected to the centralized wastewater system.

"This is not the 1980s," he said. "The days when unlimited funds were available for grants are over.

The EPA (Environmental Protection Agency) did a study and estimated that it would cost $17,000 a home to connect everyone to a centralized system. Do you think homeowners are going to pay for that?"

"The decentralized wastewater system is the most economical way to protect the environment and make sure the sewage systems are working properly. This is not something we did overnight. This was two or three years in the making. We had Department of Environmental Quality and Board of Health attorneys look at what we were proposing to make sure we were doing it right."

"We are the first water-sewer district in the State of Mississippi to put in a decentralized wastewater system. As we are putting it together, we listened to what the people had to say and we made changes if their complaints were legitimate."

"This type of system is being used all over other parts of the United States. It is not something that is going to go away. There are other entities in the state who are looking at our system because they are interested in doing the same thing where they are."

"The bottom line is, do you want raw sewage running out on the ground, or do you want clean water running out on the ground."

It is doubtful anything will be done in Chancery Court before the Sept. 14 deadline. Both Rankin Chancellors John Grant and Tom Zebert recused themselves from hearing the case. The two judges

asked the state Supreme Court to appoint a special chancellor to hear the matter which usually takes weeks to do.

EXHIBIT 11

CLEARY WATER, SEWER & FIRE DISTRICT
Minutes of April 8, 1999

Members present: Chairman Kenneth D. Johnson, Vice Chairman Harold Winborne, Bob Whatley, Buddy Eady, and Bill Harvey. Also present was Manager Kenn Munn, Lawyer Jim Bobo, and Engineer, Scott Armstrong.

Chairman Kenneth Johnson established a quorum.

Buddy Eady made a motion seconded by Harold Winborne to accept the minutes as written. Motion so carried.

The Commissioners considered a proposal from Susan Girani for the purchase of 2 acres for a well site. Harold Winborne made a motion seconded by Buddy Eady to have the Lawyer, Jim Bobo to draw up a contract with the legal description for the property and the Engineer, Scott Armstrong, to survey the property and present the legal description to Mr. Bobo, and all the request by Mrs. Susan Girani as presented in the proposal to be accepted. Motion was unanimously accepted.

Buddy Eady made a motion seconded by Bill Harvey to increase Tommy Malley's salary by $1.00 per hour. Motion so carried. This action was taken after Mr. Malley being employed by the District for 6 months and having passed the Class D certification for Water Operator.

The Board request that the Manager, Kenn Munn, present at the next meeting the prices and descriptions of portable gas welders, to be used in welding sewer tanks.

Buddy Eady made a motion seconded by Bill Harvey to pay for the repairs to sewer roller #2 from the reserve account. Motion so carried.

Bill Harvey made a motion seconded by Bob Whatley to approve the March bills for payment Motion so carried.

Harold Winborne made a motion seconded by Buddy Eady to approve both the Cleary Water & Sewer District and the Cleary Fire Protection District's check register for the month of March. Motion so carried.

The Board request the Engineer Scott Armstrong and Kenn Munn look at the possibilities of having a sewer treatment plant up Cleary Road to treat sewer from customers in that area.

Buddy Eady made a motion seconded by Bill Harvey to adjourn. Motion so carried

ATTESTED

/s/ Kenneth D. Johnson
Kenneth D. Johnson, Chairman

/s/ Kenneth Munn
Kenneth Munn, Sec/Trea.

EXHIBIT 12

MISSISSIPPI PUBLIC SERVICE COMMISSION

PUBLIC UTILITIES RULES OF PRACTICE AND PROCEDURE

February 15, 1994

RULE 2

DEFINITIONS

For purposes of these rules, the following terms shall be defined as indicated:

A. The term "party" is:

(1) The filing utility;

(2) The Mississippi Public Utilities Staff in its capacity as a party;

(3) Any person allowed to become an intervenor by Commission order;

or

(4) Any person made a party by service of process upon them.

B. The term "MPUS" means the Mississippi Public Utilities Staff created pursuant to Miss. Code Ann., Section 77-2-1 et seq.

C. The term "staff attorney" means the General Counsel and other attorneys for the MPUS.

D. The term "Commission attorney" refers to the attorney(s) employed to assist and advise the Commission.

E. The term "Commission staff" refers to those individuals employed by the Commission pursuant to Miss. Code Ann., Section 77-3-8.

F. The term "utility attorneys" means the attorneys for the filing utility.

G. The term "filing utility" means the public utility making a filing with the Commission through its Executive Secretary to initiate a proceeding.

H. The term "filing" means any notice, application, formal request, formal complaint or petition filed with the Commission through its Executive Secretary.

I. The term "certificate" means a Certificate of Public Convenience and Necessity or Facilities Certificate, as the case may be, issued by the Commission.

J. The term "the Act" refers to Miss. Code Ann., Section 77-3-1 et seq. Definitions contained therein are hereby incorporated into these Rules of Practice and Procedure.

K. The term "interested persons" means any persons entitled to notice of Commission proceedings as follows:

(1) In any proceeding filed by a utility other than a telecommunications utility, any person

(a) presently holding a certificate authorizing it to provide services of the same type as that authorized, or proposed to be authorized, for the filing utility, and (b) which presently holds a certificate for a service area, any part of which lies within one mile of the area certificated, or proposed to be certificated to the filing utility.

(2) In any proceeding filed by a provider of telecommunications services, all other certified providers of telecommunications services.

(3) In proceedings filed by non-utilities or proceedings initiated by the Commission, the Commission staff, or the MPUS, any person having a substantial interest in the subject matter of the proceeding or whose rights and liabilities may be materially affected thereby.

(4) In addition to the above, in the context of any rate proceeding filed under the provisions of Rule 9A (Notice Filings), any person who was a party of record in the last proceeding in which a major change in rates was sought by the filing utility.

L. The term "service" or "served" means the date a party actually delivers a pleading to another party or its attorney or, if the pleading is mailed, the date of mailing. If a pleading is served by mail, three days shall be added to the prescribed period in which the party being served has to respond to take other action with respect to the pleading.

EXHIBIT 13

APPENDIX "A"	**CERTIFICATE PROCEEDINGS**
SCHEDULE 2	**AREA CERTIFICATE/ ALL UTILITIES**

No. Copies Required, Including Original

In addition to the original and fourteen (14) copies of the petition, the following items are required:

15 1. If the utility has made any revisions to its corporate charter or its articles of incorporation since receiving its initial authority to operate, provide a copy of said revisions. If a partnership, provide a copy of any revision to the original partnership agreement. If there have been no changes, provide the docket number of the proceeding in which the company received its initial authority to operate.

15 2. If a corporation, the names and addresses of its board of directors, officers an any person owning fifteen percent (15%) or more of its stock. If not a corporation, the names and addresses of all owners or partners.

3 3. An outline map using Mississippi Department of Transportation county maps to a scale of one-half inch to the mile showing the

existing certificated area as well as the proposed additional area.

4. A full legal description of the new area.

5. A map of sufficiently large scale to show boundaries of the proposed service area as well as relevant geographical features.

6. A general description of new facilities

7. An itemized estimate of costs to the utility of all new investment.

8. A listing of all sources of funding.

9. An estimate of the impact of the cost of facilities upon rate base and rates. This item shall not apply to public utilities excluded from rate regulation pursuant to Miss. Code Ann., Sections 77-3-1 or 77-3-5 or to public utilities heretofore or hereafter exempt by Commission order from rate base regulation or to public utilities whose rates are allowed, by Commission order, to be filed for informational purposes only.

10. The number of assured and prospective customers in (a) the new area; and (b) the existing certificated area.

11. A complete set of engineering plans and specifications.

12. A copy of any required approvals from Health or Environmental Quality authorities.

13. An exhibit listing the names and addresses of all interested persons as defined in Rule

2K of the Commission's Rules of Practice and Procedure together with a certificate that the filing utility has served a notice of the filing upon each.

14. A copy of all testimony to be relied upon at hearing.

15. A copy of the current balance sheet and income statement.

EXHIBIT 14

SANITARY SEWER USE ORDINANCE CLEARY WATER, SEWER, AND FIRE DISTRICT

Section 1. Grinder pump units shall be considered a part of the public sanitary sewer and shall be the property of the District.

Section 2. Grinder pump units shall not be installed until proper application for a permit to connect to the public sanitary sewer has been made to and approved by the board as set forth in Article V, Section 3, and until a duly negotiated easement has been executed providing the District authority to install operate, and maintain said unit on the property being served.

Section 3. Installation of grinder pump units shall be done only by the District or its duly authorized representative. Installation shall include grinder pumps, sump basin, controls, discharging piping, and all accessories necessary to properly convey the sewage to the sewage treatment plant.

Section 4. Only grinder pumps and accessories approved by the Board shall be installed.

Section 5. All costs and expense incident to the installation and connection of a grinder pump unit shall be borne by the property owner. Said cost and expense shall be due and payable to the District

within ten working (10) days after date of official notice of the amount due.

Section 6. After installation of a grinder pump unit, the property owner shall be responsible for connecting the building sewer as set forth in Article V, Sections 9 and 10.

Section 7. The property owner shall be responsible for providing electrical power to the grinder pump unit control panel. A separate 230 volt (20) amp circuit shall be provided solely for operation of the grinder pump unit. All electrical work shall comply fully with the requirements of the National Electrical Code and the District and shall be approved by the Board or its duly authorized representative prior the grinder pump being placed in operation.

Section 8. Only persons authorized by the District shall have access to the grinder pump units. No unauthorized person shall uncover, make any connections or opening into alter, or disturb any grinder pump unit.

Section 9. Property owners shall in no way alter the grinder pump installation or engage in any activity which would damage the grinder pump unit or interfere with its normal operation.

Section 10. Each grinder pump unit shall be equipped with appropriate warning light which shall be activated in the event of pump failure.

Section 11. The District shall maintain sufficient spare pumps and accessories to permit prompt response to unite where pump failure has been encountered. A duly authorized representative of the District shall respond within twenty-four (24) hours to any malfunction of a grinder pump unit duly reported to the Board.

Section 12. All excavations for grinder pump unit installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. All properties whether public or private, disturbed in the course of the work shall be restored to its original condition.

ARTICLE VII

USE OF THE PUBLIC SANITARY SEWERS

Section 1. No person shall discharge or cause to be discharged any storm water, surface water,

* * *

EXHIBIT 15

[LOGO] [LOGO]

Cleary Water, Sewer & Fire District

217 Hickory Ridge Drive • Florence, MS 39073 • 601-845-6375

September 14, 2001

TO ALL WATER USER CUSTOMERS:

On June 21, 2001, of this year the Cleary Water, Sewer & Fire District, passed and put into effect a new wastewater ordinance for those people not already on the centralized wastewater system. This new ordinance and system is call a decentralized wastewater system.

WHAT IS A DECENTRALIZED WASTEWATER SYSTEM?

Until the mid 90's there were only two types of systems recognized in the USA. One was a centralized wastewater system, such as the City of Richland, Jackson, Florence and Cleary Heights has. The other was onsite wastewater treatment, where an individual has a system for wastewater treatment installed and then the individual maintained the unit. EPA up until this time recognized and promoted centralized system and discouraged onsite, because of the fact once the system was installed it became the property owners problem and like most problems which are "out of sight out of mind" the systems are not maintained properly and fail. What the

decentralized system does is combine characteristics of both systems and makes a workable program to maintain the onsite system properly.

WHO IS EFFECTED BY THE NEW ORDINANCES?

Everybody not presently on the centralized system that have onsite wastewater systems. Those are septic tanks and aerobic treatment plants.

HOW ARE THEY EFFECTED?

Every homeowner that had a onsite wastewater treatment process on June 21, 2001, was "**grand fathered**" into the system. That is the property owner will not be required to install a new system as long as it is working properly. Each property owner will be required to have his system inspected within one year of the date of this letter with the results sent to our office. Then each year following the initial inspection the District will require the property owner to present proof that the system is working properly. *If the property owner can not present proof that their system is working properly then the owner will be required to install an approved system designated by the District and will become a sewer customer of the District. The District will accept ownership of the unit and in exchange the District will maintain the unit for the life of the unit. All cost in routine maintenance will be born by the District. The customer will pay a monthly charge to the District for the service and it will be added to the water bill.* If

a present water customer of the District would like to transfer ownership of his present system to the District and have the District maintain it for him, the unit will have to meet certain qualification. These qualifications will be determined on a case by case basis and can be resolved by calling the District Office and making inquires.

The "grandfather" allowance applies only to those customers on June 21, 2001, and does not run with any transfer of ownership. Any transfers after June 21, 2001, will result in the new customer to meet all requirements of the new ordinances.

WHAT WILL IT COST ME?

The cost of the service will be determined by the Commissioner of the District, at present the cost will be a minimum of $15.00 a month and any usage over 5,000 gallons of water will cost $1.62 per thousand gallons.

All cost in maintaining the system will be born by the District with the exception of "miss use or abuse".

A copy of our "POLICY AND PROCEDURES" is included for your information and I will gladly answer any of your questions on a "one on one" basis if needed. Our phone number is 601-845-6375.

SECTION 2. All new installations of on-site wastewater disposal systems will conform to the Decentralized Wastewater Ordinances as set forth.

ARTICLE II

STEPS OF INSTALLATION
EXISTING UNITS

SECTION 1. Any existing IOWDS that fails to comply with the Decentralized Wastewater Ordinances, must be repaired within sixty (60) days to bring the system up to standards. If the IOWDS for whatever reason cannot be brought up to standards, then the owner will install a new system meeting all requirements as prescribed by the Ordinances, or if installing a new system meeting all requirements of the Regulation is not possible, make repairs as prescribed in Section 5 of this Article. *When a new system is installed to replace a failing existing system the District will assume ownership and provide perpetual maintenance of the IOWDS, and the owner will become a customer of the Decentralized Wastewater system.*

SECTION 2. If the owner wishes to transfer ownership of any existing IOWDS that complies with the Decentralized Wastewater Ordinances to the District, the owner must present to the District

proof from an authorized manufacturers representative, or the Department of Health, that the IOWDS is up to standards in operation. Furthermore the District will pay for the inspection if the IOWDS complies and the District assumes ownership of the system. If for whatever reason the District does not assume ownership of the system, the owner will be billed for the cost of the inspection. At the time the District assumes ownership of the system then the owner becomes a customer of the Decentralized Wastewater system and the District will perpetually maintain the system. If the District assumes ownership of an IOWDS, the property owner will provide to the District the proper right-of-way and easement to provide egress and aggress to the IOWDS so as to allow the properly identified District employee to maintain the system. To allow for proper maintenance of the system, nothing shall be built over, or laid over, the IOWDS or any electrical or water conveying portion of the system. Transfer of ownership of an existing IOWDS must take place with one year of the time that the Ordinances go into effect to avoid any future cost for maintenance.

SECTION 3. All existing IOWDS that are under a maintenance agreement with the Manufacturer of the system will not

require an annual inspection/ certification as long as a copy of the current in-forced agreement is on file at the District's office. *All other systems not covered by a maintenance agreement will be required to furnished an approved inspection report Each year, or be in violation of the Ordinance.*

SECTION 4. Any existing system that will require a complete upgrade or change of the system will must meet all provisions of Article III "New Installations".

SECTION 5. Any system that can not be repaired or replaced, to fully approvable standards, shall be improved with recommendations from the Department of Health so as to treat the wastewater as best as possible, reduce the volume of treated effluent as much as possible, and maintain the treated effluent on the property of the generator to the greatest extent possible.

SECTION 6. All existing individual onsite wastewater disposal systems at the time of property transfer will be required to be certified and ownership of the system will be transferred to the District with the property owner becoming a customer of the Decentralized Wastewater System and the District will perpetually maintain the system.

ARTICLE III

NEW INSTALLATIONS

SECTION 1. *All new individual onsite installation shall conform to all requirements of the current Decentralized Wastewater Ordinances and the Regulation Governing Individual Onsite Wastewater Disposal.*

SECTION 2. *All new installations of IOWDS shall require the property owner* or his/her representative to provide the District two platted surveys of the site which will include all above and below ground buildings, electrical lines (buried), water lines, gas lines and aperture. The Platt will be certified by a engineer or land surveyor licensed to do business in Mississippi. The Platt will include dimensions of building(s) and approximate location of all below ground installations, A copy of the Platt will be attached to the District's soil analysis form that will be presented to the State Board of Health for the inspection of the site. The form will be filled out by the owner or his/her authorized representative to include all appropriate information. A copy of the Platt must be attached to the District's soil/site evaluation form. This form, along with the Platt, will be presented to the Department of Health for the inspection of the site. The Department of Health will inspect

the site and give to the owner the completed form which the owner will return to the District. *The District's engineer and/or manager will determine the appropriate IOWDS to be installed at the site. Upon Department of Health inspection and final approval of the installed system the District will assume ownership and perpetual maintenance of the system, with the owner becoming a customer of the District. The property owner will provide a right-of-way and easement to the District that will cover all egress and aggress for property identified employees to maintain the system. To allow for proper maintenance of the system, nothing shall be built over or laid over any electrical or water conveyances to the unit or the system itself so as to obstruct maintenance of the system.*

SECTION 3. Onsite systems incorporating a septic tank as part of the installation shall be equipped with risers at or near the surface at the inlet and outlet of the tank to facilitate inspection and pumping without removal of the top of the tank. In addition all septic tanks will incorporate an in-tank effluent filter. Outlet man way and riser shall be sized large enough to facilitate the removal of the filter for routine inspection and/or maintenance.

SECTION 4. All septic tanks, pump chambers, chlorine contact chambers and distribution boxes shall be constructed and properly sealed so as to prevent infiltration and exfiltration of liquid.

ARTICLE IV

COST AND FEES

SECTION 1. *All cost incurred by the District including the final inspection of the IOWDS will be borne by the owner. After final inspection and acceptance by the District, the District will assume all cost of maintenance of the IOWDS. Final payment for the system purchased by the District will be due and payable upon final inspection by the Department of Health.*

SECTION 2. If the District assumes ownership of a previously installed IOWDS, all cost incurred for its inspection, will be borne by the District. If the District does not assume ownership of the IOWDS then the owner will bear the cost of the inspection. The owner will bear/pay all cost incurred to bring a previously installed IOWDS up to the applicable standard necessary for the District to assume ownership.

SECTION 3. *All monthly fees and charges will be set by the District's Board of Commissioners and will be reviewed annually*

at the November public meeting. Monthly fees will based upon water consumption through the household's potable water meter.

EXHIBIT 16

INDEPENDENT AUDITOR'S REPORT ON THE FINANCIAL STATEMENTS CLEARY WATER, SEWER AND FIRE DISTRICT A COMPONENT UNIT OF THE RANKIN COUNTY BOARD OF SUPERVISORS BRANDON, MISSISSIPPI

Commissioners
Cleary Water, Sewer and Fire District
Florence, Mississippi

We have audited the accompanying statement of financial position of Cleary Water, Sewer and Fire District, a component unit of the Board of Supervisors, Rankin County, Brandon, Mississippi, as of the year ended September 30, 2000, and the related statements of activities and cash flows for the year then ended. These financial statements are the responsibility of the Cleary Water, Sewer and Fire Districts' management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards and Governmental Auditing Standards, issued by the Comptroller General of the United States. These standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial position presentations. We believe that our audit and reports provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above, present fairly, in all material respects, the financial position of Cleary Water, Sewer and Fire District as of September 30, 2000, and the changes in its net assets and cash flows for the [illegible] in conformity with generally excepted accounting principles.

Paul Ed Huhn
PAUL ED HUHN
Certified Public Accountant
January 2, 2001

Cleary Water, Sewer and Fire District
Statement of Activities
For the Year Ended September 30, 2000

Revenues		
Water Sales		193,484.
Sewer Revenue		115,915.
Assessment Income		8,262.
County taxes collected		25,929.
Connections and other income		34,295.
Total Revenue		377,885.
Operating Expenditures		
Salaries	122,374.	
Repair and maintenance	107,	

Depreciation	81,739.	
Contractual services	23,600.	
State retirement	11,826.	
Insurance	8,876.	
Utilities	30,426.	
Vehicle Costs	6,009.	
Professional services	24,616.	
Employee benefits	5,697.	
Educational costs	1,480.	
Office supplies and postage	5,601.	
Payroll taxes	877.	
Other	2,029.	
Total Expenditures		433,052.
Operating Revenue over (under) Expenditures		(55,167.)
Nonoperating Revenue (Expenditures) and Debts recovered	232.	
Interest earnings	645.	
Interest expenditures	(23,217.)	
Total Net Nonoperating Expenditures		(22,340.)
Excess of Revenues under Expenditures and Balance		(77,507.)
beginning of year [illegible]		(667,622.)
1 of year		(745,129.)
Auditor's report and notes to financial statements		

Cleary Water, Sewer and Fire District
Statement of Financial Position
September 30, 2000

ASSETS

Current Assets		
Cash on hand and in banks, unrestricted		34,694.
Accounts receivable		30,962.
payments		3,064.
Total current Asset		68,720.
[Illegible] Assets		
and	36,800.	
Buildings, plant and equipment	2,894,971.	
	2,931,771.	
Accumulated deposits	1,515,053.	
Total Fixed Assets		1,416,718.
[Illegible] Assets		
Cash in banks, restricted funds	133,431.	
Utility deposits	2,101.	
Total other assets		135,532.
Total Assets		1,620,990.

LIABILITIES AND FUND EQUITY

Current Liabilities		
Accounts payable	12,174.	
Payroll taxes withheld and accrued	861.	
[Illegible] accruals	7,913.	
[Illegible] Payable due within one year	20,895.	36,843.
Term Debt		
Customers' deposits	40,745.	
[Illegible] payable	459.727.	

Total Long Term Debt		500,472.
Equity		
Distributed capital	1,828,804.	
balance (deficit)	(745,129.)	
Total Fund Equity		1,083,675.
Auditor's report and notes to financial statements		1,620,990.

STATE OF MISSISSIPPI
COUNTY OF RANKIN

THIS 18th DAY OF JANUARY, 2001, personally came Marcus Bowers, publisher of the Rankin County News a weekly newspaper printed and published in the City of Brandon [illegible] County of Rankin and State aforesaid, before me the undersigned of [illegible] and for said County and State, who being duly sworn, deposes of that said newspaper has been published for more than 12 months is the first publication of the attached notice and is qualified under [illegible] 13-3-31, Laws of Mississippi, 1936, and laws supplementary and [illegible]-tory thereto, and that a certain

INDEPENDENT AUDITOR'S REPORT

FINANCIAL STATEMENTS

a copy of which is hereto attached, was published in said newspaper (1) week, as follows, to-wit:

Vol 153 No. 24 on the 17th day of January, 2001

/s/ Marcus Bowers
MARCUS BOWERS,
Publisher

Sworn to and subscribed before me by the aforementioned Marcus Bowers this 18th day of January, 2001

/s/ Frances Conger, Notary
FRANCES CONGER
My Commission Expires:
January 25, 2002

PRINTER'S FEE: (12 cents per word for first insertion and 10 cents per word for each subsequent insertion) 258 words at .12 each	$[Illegible]
Tabulation –2 columns by 8.5 inches at $6.00 per column inch	$[Illegible]
Proof of Publication (2)	
TOTAL	$[Illegible]

2007-2008 BUDGET WORKSHEET

		PROJECTED	ADJUSTMENTS	2005-2006	2004-2005	2003-2004	2002-2003
ORDINARY	INCOME/ EXPENSE	2007-2008	ASSESSMENTS	AUDIT	AUDIT	AUDIT	AUDIT
	WATER SALES	$241,418.22	$241,418.22	$230,492.81	$217,330.00	$206,473.00	$191,798.00
	SEWER SALES	$163,965.25	$163,965.25	$150,816.22	$14,315.00	$133,186.00	$121,820.00
	OTHER SALES WATER	$7,436.23	$7,436.23	$22,707.93	$37,903.00	$37,903.00	$14,151.00
	OTHER SALES SEWER	$21,063.40	$21,063.40	$39,377.16	$37,903.00	$37,903.00	$23,239.00
	LATE CHARGES WATER	$9,246.74	$9,246.74	$9,485.55	$10,650.00	$8,955.00	$6,045.00
	LATE CHARGES SEWER	$10,161.76	$10,161.76	$10,285.55	$10,650.00	$8,955.00	$6,045.00
	ASSESSMENT INCOME WATER	$44,423.21	$80,471.00	$44,974.00	$44,540.00	$43,520.00	$22,828.00
	ASSESSMENT INCOME SEWER		$65,800.00				
	TOTAL INCOME	$497,714.81	$599,562.60				
EXPENSES							
	PAYROLL EXPENSES	$194,184.86	$194,184.86	$151,254.37	$144,003.00	$148,178.00	$143,862.00
	BANK CHARGES WATER	$92.25	$92.25	$0.87			
	BANK CHARGES SEWER	$27.50	$27.50	$14.37			
	EDUCATION EX WATER	$380.88	$380.88	$482.50	$126.00	$1,057.00	$1,018.00
	EDUCATION EX SEWER	$640.75	$640.75	$539.50	$127.00	$1,056.00	$1,017.00
	GAS & OIL WATER	$6,400.00	$6,400.00	$5,904.22	$8,426.00	$3,251.00	$5,641.00
	GAS & OIL SEWER	$7,400.00	$7,400.00	$6,682.09	$8,426.00	$3,252.00	$5,641.00
	STATE RETIR EX WATER	$21,748.08	$21,748.08	$16,123.25	$13,891.00	$14,877.00	$14,661.00
	EMPLOYEE INS EX WATER	$25,800.00	$25,800.00	$10,255.61	$11,622.00	$9,269.00	$7,571.00
	EMPLOYEE INS EX SEWER	$25,800.00	$25,800.00	$10,255.12	$11,622.00	$9,268.00	$7,572.00
	INSURANCE WATER	$11,767.68	$11,767.68	$9,371.24	$9,077.00	$9,216.00	$3,501.00
	INSURANCE SEWER	$11,767.66	$11,767.67	$9,371.23	$9,077.00	$9,217.00	$3,501.00
	OFFICE EX WATER	$6,230.82	$6,230.82	$1,137.18	$2,876.00	$2,663.00	$2,662.00
	OFFICE EX SEWER	$7,433.75	$6,433.75	$1,361.28	$2,875.00	$2,664.00	$2,662.00
	PROF. EX WATER	$5,091.00	$5,091.00	$3,350.00	$11,461.00	$2,503.00	$5,817.00
	PROF. EX SEWER	$5,091.00	$5,091.00	$3,430.00	$11,462.00	$2,502.00	$5,817.00

PUB EX WATER	$443.12	$443.12	$130.99			
PUB EX SEWER	$443.13	$443.13	$130.89			
R & M WATER	$48,400.00	$34,405.00	$40,523.81	$39,418.00	$37,486.00	$34,905.00
R & M SEWER	$49,900.00	$63,895.00	$50,821.62	$73,206.00	$69,618.00	$64,825.00
DUES & FEES WATER	$274.50	$274.50	$559.00	$442.00	$432.00	$138.00
DUES AND FEES SEWER	$174.50	$174.50	$324.00	$442.00	$432.00	$137.00
TELEPHONE EX WATER	$2,036.62	$2,036.62	$1,962.82			
TELEPHONE EX SEWER	$2,036.64	$2,036.64	$1,881.59			
UTILITIES EX WATER	$33,150.00	$33,150.00	$30,398.45	$19,602.00	$24,222.00	$22,455.00
UTILITIES EX SEWER	$21,175.00	$21,175.00	$18,597.45	$12,014.00	$14,845.00	$13,762.00
ACTUAL PROFIT (LOSS) PER AUDIT			($26,870.00)	($70,098.00)	($32,296.00)	($35,691.00)
TOTAL EXPENSE	$486,889.75	$486,889.75				
NOTE PAYMENTS	$110,200.00	$110,200.00				
PROFIT (LOSS)	($99,374.94)	$2,472.85				